RAHCO, Inc. *and* International Association of Machinists and Aerospace Workers, AFL–CIO.
Cases 19–CA–13415 and 19–CA–13653

October 29, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On April 6, 1982, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision and a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. Nor do we find merit in Respondent's contention that, because the Administrative Law Judge generally discredited its witnesses and credited the General Counsel's witnesses, his credibility resolutions are erroneous or attended by bias or prejudice. *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656 (1949).

In sec. B,6, of his Decision, the Administrative Law Judge found, and we agree, that in changing the employees' workweek from four 10-hour days to five 8-hour days Respondent was motivated by a desire to punish its employees because they had voted in favor of union representation. The Administrative Law Judge, however, inadvertently failed to state that Respondent's conduct was violative of Sec. 8(a)(3) and (1) of the Act although he properly included such a finding in the section of his Decision entitled "Conclusions of Law."

We also note that in the second paragraph of sec. I,A,1, of his Decision the Administrative Law Judge indicated that Richard Hanson is the president of both Respondent and its parent company, R. A. Hanson Company, Inc. The record does not reflect whether Hanson is also the president of the latter company. Further, in the third paragraph of that section, the Administrative Law Judge inadvertently referred to 1981 rather than 1980 as the year that the Union commenced its campaign to organize Respondent's employees.

[2] In affirming the Administrative Law Judge's various findings that Respondent violated Sec. 8(a)(3) and (1) of the Act, we note that the General Counsel in each instance made "a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision" and that Respondent failed to show that the same action would have occurred even in the absence of the protected conduct. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980).

[3] We shall modify par. 2(d) of the Administrative Law Judge's recommended Order so as to more fully remedy the unlawful conduct found herein.

ORDER

Pursuant to Section 10(c) of th National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, RAHCO, Inc., Spokane, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(d):

"(d) Rescind and cancel the written warning and disciplinary system instituted on April 28, 1981, and expunge from its files any reference to disciplinary reports or other memoranda of disciplinary action issued the unit employees since April 28, 1981, and notify the affected employees, in writing, that this has been done and that evidence of these unlawful disciplinary reports will not be used as a basis for future personnel action against them."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT engage in the following conduct: tell employees that they have been laid off because employees supported International Association of Machinists and Aerospace Workers, AFL–CIO; threaten employees with economic reprisals unless they withdraw their support from the above-described labor organization; ask employees to solicit employees to withdraw their support from the above-described labor organization; threaten to make employees' working conditions so onerous because they supported the above-described labor organization that they will quit their employment; or convey the idea to employees that we will not bargain in good faith with the above-described labor organization.

WE WILL NOT make unilateral changes in employees' wages, hours, and other terms and conditions of employment or lay off employees without notifying and affording an opportunity to bargain about these matters to International Association of Machinists and Aerospace Workers, AFL–CIO, or in any other similar or related manner refuse to bargain collectively with this Union as the exclusive bargaining agent of all our production and maintenance

employees, including inspectors, but excluding all office and office clerical employees, all technical and professional employees, and supervisors and guards as defined in the Act.

WE WILL NOT discourage membership in the above-named union by laying off employees; by withdrawing from employees their benefits or privileges previously enjoyed; by imposing upon employees onerous wages, hours, or other terms and conditions of employment; or by otherwise discriminating with respect to employees' wages, hours, or other terms and conditions of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL restore the following practices: allow employees access to the quality control cage and warehouse office; allow employees access to the main office without having to get permission from supervision; and allow employees to have possession of the keys to storage areas where their equipment and materials are stored.

WE WILL rescind and cancel the written warning and disciplinary system instituted on April 28, 1981, and expunge from our files any references to the disciplinary reports or other memoranda of disciplinary action issued to unit employees since April 28, 1981, and notify the affected employees, in writing, that this has been done and that evidence of these unlawful disciplinary reports will not be used as a basis for future personnel actions against them.

WE WILL offer all employees discharged, suspended, or otherwise denied work opportunities solely as a result of the promulgation of our April 28, 1981, written warning and disciplinary system immediate and full reinstatement to their former positions or, if they are not available, to substantially equivalent ones, without prejudice to their seniority or other rights and privileges, and make whole for their loss of wages employees who were discharged, suspended, or otherwise denied work opportunities solely as a result of the promulgation of the April 28, 1981, written warning and disciplinary system, with interest computed thereon.

WE WILL make whole the employees named immediately below for any loss of pay they may have suffered as a result of their March 24, 1981, layoff, with interest computed thereon.

George Altringer	Robin Oates
Randy Anderson	Bob Ochs
John Angelo	Cornethia Slater
Richard Swagger	Thomas Campbell
Ron Walker	Ray Collinsworth
Donald Growt	Larry Wiley
Kevin Knutson	

WE WILL, upon written request from the above-named Union, rescind the increase in the starting rates of pay of the employees represented by said Union which were placed into effect on or about June 1, 1981.

WE WILL revoke the June 1, 1981, changes in the formula used to compute the periodic annual pay raises granted to the employees represented by the above-named Union and restore the formula in effect prior thereto, and make employees whole for any losses they may have suffered by reason of the changes in the formula, with interest computed thereon, if the above-named Union makes a written request that we revoke the changes we made in the formula.

RAHCO, INC.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: This proceeding, in which a hearing was conducted on November 3–6, 1981, is based upon unfair labor practice charges filed against RAHCO, Inc., herein called Respondent, by International Association of Machinists and Aerospace Workers, AFL–CIO, herein called the Union. The charge in Case 19–CA–13415 was filed on April 2, 1981, the one in Case 19–CA–13653 was filed on June 22, 1981, and a consolidated complaint was issued in these cases on July 29, 1981, by the Regional Director for Region 19 the National Labor Relations Board (the Board), on behalf of the Board's General Counsel, alleging, as amended at the hearing, that Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, herein called the Act. In substance the 8(a)(3) and (1) allegations allege that in order to punish its employees for voting for union representation or to discourage its employees from supporting the Union, Respondent laid off 13 employees for approximately 3 weeks; changed the employees' work schedule from a 4- to a 5-day workweek; changed the employees' wage structure; instituted a formal disciplinary system and disciplined five named employees pursuant to this system; and insti-

tuted several other changes in the employees' conditions of employment. The complaint further alleges that, besides being illegally motivated, the aforesaid conduct violated Section 8(a)(5) and (1) of the Act because it was engaged in without affording the Union an opportunity to bargain. The complaint alleges that Respondent violated Section 8(a)(1) by telling employees they had been laid off for voting for union representation, that Respondent intended to punish them because they voted for union representation, that Respondent intended to close the plant and contract out the work unless they repudiated the Union, that Respondent did not intend to bargain in good faith with the Union, and that Respondent interogated employees about their union sympathies and activities. Respondent filed an answer denying the commission of the alleged unfair labor practices.[1]

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence: A Chronology*

1. Background

Respondent operates a manufacturing facility in Spokane, Washington, where, pursuant to a contract with the International Harvester Company, it modifies standard level land harvesting equipment, commonly known as combines, so they are able to operate on hilly terrain. Respondent commenced its operations in November 1979, but spent the first several months training its employees and experimenting with various prototypes and did not start full production until approximately late May or June 1, 1980.

Respondent is a wholly owned subsidiary of the R. A. Hanson Company, Inc., an engineering and manufacturing firm, located in the same building as Respondent immediately adjacent to Respondent. The president of the parent company, Richard Hanson, is Respondent's president. During the time material herein the person in charge of day-to-day operation of Respondent's manufacturing operation was its plant manager, Robert Kissinger, who had previously worked for the parent company. Reporting to Kissinger in the managerial hierarchy were Purchasing Agent Lawrence McCauley; Warehouse Supervisor Ralph Engel; and Assembly Line Supervisor Bruce Caroon. Caroon's assistant was Mike Stinson whose status as a statutory supervisor is in dispute in this proceeding.

Early in July 1981 the Union apparently commenced a campaign to organize Respondent's 20 production and maintenance employees and on February 2, 1981, filed a petition with the Board asking the Board to conduct a representation election among those employees. Pursuant to a consent election agreement entered into between Respondent and the Union on February 26, 1981, the Board conducted an election on March 19, 1981, which the Union won. Respondent did not file objections to the conduct of the election so the Board, during the normal course of business, on March 27, 1981, certified the Union as the employees' exclusive collective-bargaining representative. On April 23, 1981, the parties commenced contract negotiations and thereafter held several other bargaining sessions, but as of the date of the hearing in this case had not succeeded in reaching an agreement on the terms of a collective-bargaining contract.

Respondent was opposed to the Union representing its employees and prior to the election conducted a campaign designed to persuade its employees to vote against union representation.

2. On March 23 Respondent institutes several new work policies

As described *supra*, on Thursday, March 19, a majority of Respondent's employees voted in favor of union representation. Since Respondent's employees worked four 10-hour days a week, Monday through Thursday, March 19 was their last workday for that workweek. They were not scheduled to return to work until Monday, March 23. When they returned to work on March 23 the employees discovered that their access to the plant prior to the start of the workday was restricted; that once in the plant their access to certain areas was also restricted; that they were no longer allowed to possess keys to the storage areas where their tools and materials were kept; and that in the matter of personal telephone calls made by employees Respondent had instituted a more stringent policy. The evidence pertaining to these changes follows.

Respondent's employees start work at 7 a.m.; however, a significant number of employees arrive at the plant earlier and prior to March 20 entered the plant when they arrived through a door leading from the parking lot into the production area. On March 23 Respondent put into effect a policy whereby this door was locked until 6:55 a.m. The result was that employees had to wait in their automobile for 5 or 10 minutes until the door was unlocked. This policy continued for at least the next 2 months at which time Respondent reverted back to its past practice of unlocking this door earlier so that the employees could enter the plant earlier. Respondent never gave a reason to the employees for instituting the aforesaid locked-door policy.

On March 23 the employees discovered that signs had been posted on the cage used by quality control inspectors and at the foot of the steps leading to the mezzanine where the desks of the assembly and warehouse supervisors were located,[2] herein called the warehouse office,

[1] In its answer Respondent admits that the Union is a labor organization within the meaning of Sec. 2(5) of the Act and that Respondent meets the Board's applicable discretionary jurisdictional standard and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act.

[2] I reject the testimony of Plant Manager Kissinger and Assembly Supervisor Caroon that the sign posted on the stairway leading to the warehouse office had been posted prior to the time material herein. Employees Albert, Ochs, Wiley, and Wentworth testified that the first time they observed this sign was on March 23. Since they impressed me as more reliable and credible witnesses on this point than either Kissinger or Caroon, I have credited their testimony.

and on the door leading from the assembly area into the Company's main office. The quality control cage sign stated, "STAFF INSPECTORS ONLY." The sign on the stairway leading to the warehouse office stated, "SUPERVISORS ONLY." The sign posted on the door to the front office stated, "NO ADMITTANCE TO OFFICE WITHOUT WRITTEN AUTHORIZATION BY SUPERVISOR." Prior to March 23 the employees' access to the aforesaid areas was unrestricted. They visited the main office to use the telephone and to speak to office clericals about employment matters; i.e., their pay, insurance, etc. Likewise, employees visited the warehouse office to speak to the warehouse supervisor or the assembly line supervisor about their work and visited the quality control cage to speak to the quality control inspectors about their work or to get materials. Respondent offered no explanation to the employees for the restrictions imposed upon the employee's rights to enter the main office, the quality control cage, or the warehouse office. On March 23, Assembly Line Supervisor Caroon merely told the employees who worked under his supervision that "You'll notice that we got different signs on different things posted up that we want you guys to follow" and told the employees that the signs constituted "new changes that management had just adopted" and the employees were expected to obey them.[3]

Prior to March 23 several of Respondent's employees possessed the keys to the storage areas where materials and equipment were kept that the employees used to do their work. On March 23 Respondent took these keys away from the employees without explanation. Thereafter, whenever the employees needed equipment or materials which were locked up they were required to go to their supervisors and have the supervisors unlock the door or cabinet. I recognize that Plant Manager Kissinger testified that subsequent to March 23 Supervisors Engel and Caroon were suppose to "unlock everything" that needed to be unlocked prior to the start of the workshift thereby obviating the need of the employees having to seek out the supervisors whenever they needed something which was in a locked area. His testimony was not corroborated by either Caroon or Engel, both of whom testified for Respondent, and it was contradicted by the testimony of employees Wentworth and Albert who, on this subject, impressed me as more credible witnesses than Kissinger.

Prior to March 23 Respondent's employees were allowed to use the telephone located in the main office to place personal telephone calls.[4] On March 23 when employee Wentworth went into the main office and asked if he could use the telephone, he was informed by the office personnel that he could not use the phone and had better get out of the office because he did not have a slip giving him permission to enter the office. Later that day Wentworth's supervisor, Larry McCauley, informed him that employees were no longer allowed to use the telephone other than for specific emergencies and that these telephone calls, if possible, should be made only during the employees' break period and lunch break. That same day Assembly Line Supervisor Caroon informed all of the assembly workers that they could not use the telephone unless it was to make an emergency phone call and before they could go into the office to use the phone they would have to come to him to get his written permission. Thereafter, whenever the employees wanted to enter the main office to either use the telephone or in order to talk to someone in the office they had to get written permission from their supervisor and show the signed slip to the personnel in the main office.

The testimony of employees Albert, Wentworth, and Ochs indicates that prior to March 23 the employees' use of the office telephone during breaktime and lunchtime was not limited to certain types of calls; i.e., emergency calls. In fact, Respondent's memo to the employees issued on June 2, 1981, which admittedly is a reiteration of the pre-March 23 telephone policy specifically indicates that the use of the Company's telephone by the employees during lunch and break periods was not limited to certain types of calls; i.e., emergency calls. Accordingly, to the extent that Kissinger's testimony indicates that prior to March 23 Respondent's telephone policy was that the employees, during break and lunch periods, could make only certain types of calls, I reject Kissinger's testimony.

3. The March 24 layoff and Supervisors Caroon's and Engel's contemporaneous comments

On the morning of Tuesday, March 24, Plant Manager Kissinger held a meeting of the approximately 20 production, maintenance, and inspection employees represented by the Union and told 13 of them that they were being laid off temporarily because Respondent was short of parts. Respondent's purchasing agent, Lawrence McCauley, advised the employees that the parts which Respondent was short of were as follows: steering cylinders; beater house bushings; hydraulic filter assemblies; and jackshafts. The 13 employees selected for layoff included all of the approximately 10 or 11 assembly line workers plus 1 or 2 of the inspectors or maintenance/repair employees whose work was closely related to the work of the assembly line employees. All of the laid-off workers returned to work on Monday, April 13.

On March 24, approximately 45 minutes after the layoff was announced, Assembly Line Supervisor Caroon came out of the main office and went to station A of the assembly line, the work station of employees Robert Ochs and Kevin Knutsen. Caroon asked what they thought about being laid off. Ochs indicated he did not think very much of the layoff and asked why the employees were laid off when there had been no layoffs in the past when parts were short. Caroon acknowledged that employees were not laid off in the past and stated to Ochs and Knutsen "this is what you voted for when you

[3] Based upon the credible and undenied testimony of employee Ochs. Caroon's testimony about what he told the employees at this meeting was vague. In terms of demeanor, Caroon gave me the impression that he had absolutely no independent recollection of what he said to the employees at this meeting.

[4] Although at an undisclosed time there was a second telephone for the employees' use located in the area of the assembly line, it does not appear that this phone was there on March 23 or immediately prior to that date.

voted for the Union." Ochs indicated that this was not what the employees had voted for when they voted for union representation and that Caroon knew this. Caroon indicated he felt the layoff would create an economic hardship on some of the employees who were being laid off, including Knutsen and his family, but informed Ochs and Knutsen, "this is what you guys voted for when you voted for the Union." Ochs told Caroon to leave them alone if he did not have anything better to do than to annoy them. This ended the conversation.[5]

Caroon then went to the work station of employee Randy Anderson and asked Anderson if he knew why he was being laid off. Anderson attributed the layoff to the Union. Caroon denied this, but in the same breath told Anderson that the reason the employees were being laid off was that they wanted "a job description" and did not want to do the menial work they had done in the past when there were no parts.[6]

Caroon then talked to a group of employees who worked on the assembly line. Present in the area were employees Tom Campbell, Randy Anderson, Richard Swagger, Larry Wiley, Robbin Oates, and Don Growt who were joined by employee Bob Wentworth. Caroon walked up to where Wiley was working and started a conversation and soon the other employees named above joined in the conversation. One of the employees asked why they were being laid off and whether the layoff had anything to do with the union election. Caroon answered, "You people wanted this, you voted for it, and now you've got it." Oates asked why the workers could clean shelves or sweep floors or stock parts or pull weeds, like they had done in the past, when there had been a shortage of parts or a lack of work on the assembly line. Caroon replied, "Ochs[7] wanted a job description. You people got a job description now, you voted for it . . . your job description is working on the line, so you are going home."[8]

On March 24 employee Robert Ochs helped Warehouse Supervisor Ralph Engel start Engel's automobile in the Company's parking lot at the end of the workday. Engel who had accepted a job with another company and was scheduled to leave Respondent's employ the week of March 30 indicated that on account of the layoff this would probably be the last time he would be speaking with Ochs, who was being laid off. Ochs complained about the layoff, stating to Engel that he felt it was a rotten deal because in the past there had been no layoffs. Engel indicated that he agreed with Ochs and advised him to "take good notes." When Ochs asked why he should take notes, Engel answered, "because of everything that Kissinger has stated in one of the meetings that he is going to make it very, very rough on [the employees] who were union."[9]

4. Supervisor Engel's April 1 conversation with employee Wentworth

On the morning of April 1 Warehouse Supervisor Engel, who was scheduled to leave his employment with Respondent later that week, spoke to employee Wentworth at Wentworth's work station and told him that in his opinion "the Company's plans insofar as the bargaining table were concerned [was] to come in, tell [the employees] they were not going to give [them] anything, and that was that" and that "the company's intentions towards the employees in general were to make [them] so miserable that hopefully [they would] get mad and quit and leave [Respondent] free to hire new employees that would be non sympathic to the Union."

The description of this converstation is based upon the testimony of employee Wentworth who testified in a straightforward and convincing manner and in terms of his demeanor impressed me as an honest witness. Also, his testimony was corroborated in significant part by employee Albert who was working about 5 feet away from where Engel spoke to Wentworth and overheard part of what Engel stated. Engel was not questioned about this specific conversation with Wentworth but simply testified that he "[did] not remember" stating that Respondent intended to make it so miserable for employees that they would quit so Respondent could replace them with nonunion employees. It is clear from Engel's subsequent testimony that his testimony that "he did not remember" was not an unequivocal denial of having made the statement attributed to him.

5. Supervisor Caroon's April conversations with employee Albert[10]

On April 10 employee Albert observed that Assembly Line Supervisor Caroon looked sad and that he had looked this way for the past few days, so, she asked him

[5] The description of this conversation is based upon the testimony of Robert Ochs. Caroon specifically denied the remarks attributed to him. Since Ochs gave his testimony in a straightforward and sincere manner and in terms of his demeanor impressed me as a more credible witness than Caroon, I have credited his testimony.

[6] The description of this conversation is based upon the testimony of Randy Anderson, who impressed me as a credible witness.

[7] Ochs is an employee who during the Union's campaign openly supported the Union. He was the employee who represented the Union at the March 19 representation election by serving as the Union's election observer.

[8] The description of this conversation is based upon the testimony of Larry Wiley. Caroon specifically denied making the remarks attributed to him. Wiley gave his testimony in a straightforward and sincere manner and in terms of his demeanor impressed me as a more credible witness than Caroon. Also, his testimony is corroborated in significant respect by the testimony of employees Wentworth, Growt, and Swagger, all of whom impressed me as credible witnesses. It is for these reasons that I have credited Wiley's testimony.

[9] The description on this conversation is based upon the testimony of Robert Ochs which was given in a straightforward and sincere manner. In terms of demeanor Ochs impressed me as an honest witness. Engel recalled having a conversation in the parking lot with Ochs and although he testified that he was unable to remember making the statement about the Union attributed to him by Ochs, Engel was unable to specifically deny that he made the statement.

[10] The description of the conversations between employee Albert and Supervisor Caroon set forth herein are based upon the testimony of Albert. Caroon specifically denied the remarks attributed to him in these conversations. I have credited Albert because in terms of her demeanor she impressed me as a more credible witness than Caroon. In addition, it does not appear that she had any reason to color her testimony inasmuch as she was not one of the laid-off employees, thus she had no financial stake in this proceeding and there is no evidence that she was a supporter of the Union. Also, at the time of her testimony she was employed by Respondent. Lastly, I note that her description of the conversation which took place late in April was corroborated in significant part by employee Wentworth who overheard part of the conversation.

what, if anything, was bothering him. Caroon replied that he did not like the idea of having to look for a new job. Albert pointed out that he already had a job. Caroon told Albert that in his opinion "the handwriting is on the wall" and, in answer to Albert's inquiry about what he was talking about, explained that the Company's production schedule was in the process of being changed, that the work was going to be contracted out, and that in fact some of the work was presently already being contracted out. Caroon indicated that this was the reason Plant Manager Kissinger was visiting the home office of Respondent's only customer, International Harvester. Caroon also stated that Respondent's president did not care whether Respondent's employees ever got a contract or not and that Respondent's president did not intend to mess with Respondent because it was just a drop in the bucket to him and not as important as his other holdings and that, in Caroon's opinion, Respondent's parent company would just as soon see the employees "all go as to see [them] stay [there] because they were afraid that the Union might get on the other side [referring to the fact that Respondent's parent company was located in the same building adjacent to Respondent]." Caroon told Albert that he felt that if the employees revoted and voted the Union out that everything would return to normal. Albert asked whether Caroon was suggesting that she solicit the other employees to vote the Union out. Caroon stated, "somebody needs to."

On April 14, the day after the employees returned to work from their layoff, Caroon told Albert that he was really surprised at the good work attitude of the employees who had been laid off, but stated that "if they don't hurry up and have a change of heart by June 1 it will be too late," and advised Albert to start a savings account.

Late in April, Albert went to the area of the inspector's cage in order to ask Caroon to sign a slip giving her permission to go into the office to use a telephone. Caroon, upon hearing Albert's request, stated it had better be an emergency. Albert stated that it was important but not a matter of life and death. Caroon replied, "your telephone privileges are just about that far from being taken away forever." Albert asked "why." Caroon responded, "the time for humanities is over . . . is long over . . . with what's been going on . . . it does not even enter the picture anymore." Caroon stated that Respondent's employees "were just Rich Hanson's [referring to Respondent's president] toys and that he could do anything that he wanted with [them]" and that Respondent intended to complete its production schedule and lay everybody off.

6. On April 1 Respondent changes its employees' work schedule

Since Respondent commenced its operation in November 1979 its employees worked four 10-hour days, Monday through Thursday, until April 1, 1981, when their work schedule was changed to 8-hour days, Monday through Friday. Thereafter on a date not set out in the record Respondent returned to its four 10-hour-day work schedule and was operating on that schedule when the hearing was conducted in this proceeding.

During the period immediately prior to the March 19 representation election, Respondent, in its campaign to persuade the employees that they should not vote for union representation, pointed out that without union representation they enjoyed significant benefits, one of which was a 3-day weekend. Specifically, Respondent's president, Hanson, in an effort to persuade the employees that they should not vote for union representation sent them a letter dated February 25, 1981, which, among other things, pointed out that without union representation they enjoyed significant employment benefits, one of which was a 3-day weekend. Shortly after the receipt of this letter, Assembly Supervisor Caroon asked employee Wiley if he had read the letter. When Wiley indicated he had done so, Caroon asked whether Wiley had read it "between the lines." Wiley asked what Caroon meant. Caroon showed him the February 25 letter and specifically directed his attention to that portion of the letter which stated that Respondent provided the employees with a 3-day weekend. Caroon then asked Wiley what he thought the alternative was to a 3-day weekend. Wiley replied, "It must be a 2 day weekend," whereupon Caroon stated "he wanted to make sure that the employees understood what the benefits were that they had at that time" and that the Company was just trying to get across to the employees the benefits they "now had."[11] I am of the opinion that Caroon's comments to Wiley constitute a none too subtle threat that if the employees, contrary to Respondent's opposition to union representation, voted in favor of the Union, Respondent would change their workweek from a 4- to a 5-day workweek.

7. In the middle of May Assistant Assembly Supervisor Stinson questions employees about their union dues

Mike Stinson was employed during the time material herein as an assistant to Assembly Supervisor Caroon. As discussed *infra*, Stinson's status as a supervisor within the meaning of the Act is disputed. He attempted to cast a ballot in the March 19 representation election but his ballot was challenged by the Union on the ground that the Union felt he was a statutory supervisor. Nonetheless, by letter dated April 7 the Union solicited Stinson to join the Union and informed him that if he desired to join that the initiation fee was $10 and that he would have to pay an unspecified amount as union dues. Later that month or early in May, Union Stewards Ochs and Wentworth personally solicited Stinson to join the Union at which time they informed him about the $10 initiation fee as well as his obligation as a member to pay an unspecified amount of union dues.[12] The record reveals

[11] The description of this conversation is based upon Wiley's testimony. Caroon testified that during the time in question he asked whether Wiley read the February 25 letter but denied asking whether Wiley had read the letter between the lines or that he specifically discussed that part of the letter which referred to the 3-day weekend. I have credited Wiley's testimony because in terms of his demeanor Wiley impressed me as a more credible witness.

[12] Ochs testified that the reason the Union solicited Stinson to join the Union was that since Respondent was taking the position that Stinson was not a statutory supervisor that the Union did not want to be placed in the position of denying an employee his right to join the Union if the Respondent's contention proved to be correct.

that it was common knowledge among the employees that Stinson had been invited to join the Union.

During the week of May 18 Stinson, on Respondent's premises during worktime, questioned employees Wiley, Albert, Anderson, and Ochs about their union dues, as follows:[13]

Stinson asked Wiley how much the union dues were and whether Wiley had paid his dues. Wiley told Stinson the amount of the dues and that he had paid his dues. In response Stinson pointed out to Wiley that the upcoming weekend was Memorial Day weekend, that Respondent had previously worked a 4-day weekend and that "this coming weekend would have been a 4 day weekend, if it had not been for the Union."

Stinson asked Albert if she were paying union dues.

Stinson, in the presence of employee Campbell, asked whether Anderson was a union member and whether Anderson was paying union dues. Anderson, who did not feel this was any of Stinson's business, ignored his questions. Stinson stated to Anderson that "going to the 5 day workweek was because of the Union and if [Anderson] voted the Union out, that [the employees] would go back to 4 days a week."

Stinson asked Ochs whether he was paying union dues. Ochs informed Stinson that they should not discuss such a matter on worktime but that he would talk with Stinson about it during their breaktime.

8. On April 28 Respondent institutes a system of written warnings and discipline

From the time Respondent commenced operations in 1979 until April 30, 1981, its employees were rarely disciplined. Only rarely were employees issued written reprimands or otherwise disciplined for misconduct. Assembly Line Supervisor Bruce Caroon testified that the disciplinary system used by supervision before April 28, 1981, was that the supervisor talked to the employee and if the employee did not change his ways the supervisor then talked to Plant Manager Kissinger and that Kissinger and the supervisor tried to resolve the matter but that "usually it was just forgotten." When a supervisor thought that an employee's misconduct warranted discipline, Caroon testified, there were no guidelines for the supervisor to follow. Respondent had no system which provided for progressive discipline or for that matter any system of discipline. Caroon further testified that the only instruction he received from management about disciplining employees for acts of misconduct was that "I should try to work it out with the employees." Only rarely did Caroon write a written reprimand and place it in the employee's personnel file. Most of the time he did nothing about disciplining the employees for acts of misconduct. In fact Caroon testified that very seldom did he even alert management about employees' disciplinary problems and that he had never recommended to management that an employee be terminated because of misconduct. In short, Caroon testified that prior to April 28 he "just lived" with the employees' misconduct and very rarely did anything about it. All this changed on April 28, 1981.

On April 28 Respondent's lax system of discipline changed when the general counsel of Respondent's parent corporation, Michael Riccelli, issued a memo to Respondent's supervisors on the subject of "employee disciplinary measures." This memo reads as follows:

> This memo is intended to define and describe the procedures by which RAHCO, Inc. employees may be reprimanded or otherwise be subject of disciplinary actions.
>
> Employees may be reprimanded or disciplined for infractions against company policy, laws, or rules or regulations dealing with the safety and health of employees and nonemployees. The procedure for reprimands and employee disciplinary action, and the many considerations surrounding it, are as follows:
>
> 1. Any action must be based upon objective, verifiable events or evidence; objective, in this sense, is used to describe observable or factual information, rather than personal interpretation or conclusion;
>
> 2. It is always desirable to have more than one source of objective support for determining whether an infraction has occurred; this means that an individual's observation coupled with plant records, or two individual's observations more desirable than only one individual's observation or one set of records;
>
> 3. If it is determined that action should be taken, it should be taken only by the direct supervisor of the employee in question; action should, however, be taken in the presence of the plant manager, or if he is absent, another supervisor;
>
> 4. Action may be taken by: a person who is not the supervisor of an employee in question; by the supervisor, but not in the presence of the plant manager; or another supervisor; but only when action is necessary to protect the immediate safety and well being of any employee or nonemployee.
>
> 5. All actions (except in cases where immediate action is necessary, such as #4 above) shall be pursuant to a written reprimand or other action in a form similar to the one attached;
>
> 6. All action shall be taken outside the presence of shop employees;
>
> 7. A copy of the written reprimand shall be provided the employee, and any action or meaning of the reprimand shall be explained by the supervisor to the employee;
>
> 8. Any management or supervisory employee witnessing the action shall sign the original reprimand stating that he witnessed it being delivered and discussed with the employee.
>
> 9. The original reprimand, signed by the supervisor, shall be forwarded to management for inclusion in the employee's file.

[13] The description herein of Stinson's conduct is based upon the undenied testimony of employees Wiley, Albert, Anderson, and Ochs, each of whom impressed me as credible and reliable witnesses.

> 10. Consistent with previously communicated authority from the management, the supervisor may, if necessary, take action up to directing the employee to leave the premises and not return until recalled by the company; however, at no time may the supervisor terminate the employee without approval from the plant manager, or in the absence of the plant manager, the plant manager's immediate supervisors.
>
> All reprimands or actions should advise employees of the infraction, and that the employee will face possible termination if the infraction occurs again, or the complained of activity is not corrected. Although it is not for discussion with the employees, an employee will be subject to termination if more than two reprimands for the same infraction or activity are issued within a thirty day period. Also, the same is true for more than two dissimilar reprimands within a thirty day period, depending on the severity and nature of them. An employee may also be terminated if more than three reprimands are issued either for the same infraction or activity or for three severe infractions or activities during any time within the employment history.
>
> The employee may be terminated, upon one reprimand, if the infraction is of a severity or nature which warrants it, especially in the case of presenting danger to the safety and health of any employee or nonemployee.
>
> If the employee corrects the complained of activity, be sure to inform him that you are aware of the improvement.

Attached to the memo was a form entitled "Disciplinary Report" with spaces provided for the details of an employee's misconduct and the supervisor's recommendation to management. The disciplinary report on its face informs the employee to whom it is being issued that "disciplinary reports are issued for infractions which could result in termination of your employment."

In substance Riccelli's April 28 memo regarding disciplinary measures informed Respondent's supervisors that the employees who violated company rules or otherwise engaged in misconduct were to be issued written reprimands, that the supervisors were to issue them using the newly prepared disciplinary report which was attached to the memo, and that a copy of the written reprimand should be forwarded to management for inclusion in the employee's personnel file. It was also made clear to the supervisors in an attachment to the memo, dealing with the way supervisors should treat employee misconduct, that the supervisors were expected to take certain disciplinary action in dealing with employee misconduct which ranged from the minimum of issuing a "disciplinary report" to the maximum of issuing such a report with a recommendation that the employee be terminated. The memo also informed the supervisors that an employee "will be subject to termination if more than two reprimands for the same infraction or activity are issued within a 30 day period, depending on the severity and nature of them" and that an employee "may also be terminated if more than 3 reprimands are issued either for the same infraction or activity or for 3 severe infractions or activities during any time within the employment history" and that an employee "may be terminated upon one reprimand if the infraction is of a severity or nature which warrants it."

Respondent did not inform the employees about this new system of discipline. They learned about it for the first time on April 30 when the system was implemented with the wholesale issuance of written reprimands accompanied by employees being placed on probation. On April 30 Assembly Line Supervisor Caroon issued eight disciplinary reports to four different employees; three of whom were placed on probation. Several of the written reprimands involved conduct which occurred several days prior to April 28 and at the time of the conduct the employees were not reprimanded.

I shall now set out the evidence pertaining to the eight disciplinary reports issued on April 30 to employees Growt, Wiley, Ochs, and Oates and the probationary discipline action meted out to Oates, Growt, and Ochs on that day, inasmuch as this discipline has been alleged as a separate violation of Section 8(a)(1) and (3) of the Act. For the same reason I shall set out the evidence pertaining to the May 28 disciplinary report issued to employee Anderson.

Donald Growt

On April 30 Growt received three disciplinary reports signed by Caroon and Kissinger. One was dated April 15 and the other two were dated April 29.[14] On the morning of April 30 Growt was summoned to Respondent's conference room where, in the presence of Caroon and Kissinger, he was given copies of the three reports, was allowed to give his version of the misconduct attributed to him, and was placed on 30 days' probation.

In the April 15 disciplinary report Caroon wrote that Growt "has been observed smoking in a no smoking area in the past by both myself and Mike Stinson in direct violation to safety" and recommended that Growt "be given the last warning." The record establishes that prior to April 30 Growt was observed on three or four occasions by Caroon smoking in the paint area where smoking was prohibited and that on these occasions Caroon indicated that Growt should stop smoking but, as Growt credibly testified, I find that at no time was Growt threatened with discipline for engaging in this conduct.

In one of the disciplinary reports dated April 29 Caroon wrote that "on Monday, April 27, 1981 [Growt] was observed having physical inability to perform his job including inability to properly assemble parts as his hands were shaking so bad he could hardly hold a cigarette" and recommended that Growt be warned that further inability to perform his job could result in termination. The record establishes that the incident referred to took place on Tuesday, April 28, not Monday, April 27,

[14] Growt credibly testified that all three disciplinary reports were given to him on April 30. Caroon was vague and evasive on the subject of when the reports were issued to Growt and finally reluctantly testified that it was possible that all three were issued to Growt April 30, even though one was dated April 15.

and that Growt, due to a boating accident on Sunday, April 26, suffered prolonged exposure to cold water and the result was that he was absent from work Monday, April 27. Growt went to work on April 28 but due to the fact that his body was still suffering from the effects of the cold water he was unable to work, so after 1 hour he spoke to Caroon and advised him that he was unable to work due to the boating accident. Caroon told him not to worry about the matter and to go home. Caroon did not directly or indirectly advise Growt that Caroon felt this was a matter for discipline. Caroon, in justifying the issuance of the disciplinary report which he issued to Growt, testified that in the past Growt had come to work under the influence of liquor and that on April 28 Caroon did not believe his story about the boating accident but thought that Growt was under the influence of alcohol.

In the other disciplinary report dated April 29 Caroon wrote that Growt "is failing to perform his work adequately as witnessed by his continuing to not properly clean and prime parts prior to final painting" and recommended that Growt be placed on 30 days' probation. Growt credibly testified that prior to April 30 no one, including Caroon, ever indicated to him that he was engaging in the conduct attributed to him in this disciplinary report.[15]

Larry Wiley

On April 30 Larry Wiley was called into the Company's conference room where, in the presence of Caroon and Kissinger, he was given a copy of a disciplinary report dated April 16, 1981, signed by Caroon and Kissinger.[16] In this report Caroon wrote that Wiley "was working on April 16, 1981 at a production rate much slower than is required. He is failing to perform his work adequately as verified by myself and Mike Stinson," recommended that Wiley be given a "warning."

The record establishes that on April 16 Wiley was spoken to in a derogatory manner about his work for the first time during his 11 months of employment with Respondent. On April 16 Wiley was working at the hoist station and waiting for another worker to finish using a torque wrench which he needed. Wiley did not realize there was another torque wrench in one of the tool carts. Stinson, the assistant assembly line supervisor, pointed this out to Wiley and warned Wiley not to stand around. Wiley immediately took the torque wrench and commenced working at which point Stinson returned with Caroon and Caroon told Wiley that if Wiley did not want to cooperate and work that they could arrange for him to find employment elsewhere. Prior to this Caroon had never spoken to him in a derogatory manner about his work. Caroon testified that the reason he wrote up the April 16 report was due to Wiley's extremely bad attitude which manifested itself in his refusal to do any work and that after observing this for a few days that Caroon wrote up the April 16 report and gave it to Wiley within a day or two after having written it up. I reject Caroon's testimony in its entirety. As I have found *supra*, first Caroon was not telling the truth when he testified he gave the disciplinary report to Wiley within a day or two after having written it up. Second, that Caroon in fact wrote out such a report on April 16 is highly suspect because the disciplinary report forms in question did not exist until April 28 when they were distributed by Riccelli. Third, the report itself only refers to something which occurred on April 16; there is no reference to any pattern of conduct on the part of Wiley. Fourth, the report on its face fails to indicate that Wiley had been spoken to prior to April 16 about not working. Fifth, in terms of his demeanor, Caroon was an unimpressive witness.

Robin Oates

On April 30 Robin Oates was called into the conference room where, in the presence of several management officials including Caroon and Kissinger, he was given a disciplinary report dated April 28, 1981, which was signed by Caroon and Kissinger. In this report Caroon stated that "on Friday, April 24, 1981 [Oates] was told to empty the garbage can in his work area that was full of flammable material before he left work. He refused to do as he was ordered and made it obvious to many other employees." Caroon recommended that Oates "be terminated because of insubordination." Kissinger rejected that recommendation but instead placed Oates on 15 days' probation.

The record establishes that on Friday, April 24, at the end of the workday, Caroon told Oates to empty the trash can at his work station which was full of flammable painting materials. Oates ignored Caroon's instruction but instead asked another person to do it for him and, when Caroon repeated the instruction, Oates told Caroon where he could "stick" the trash can.

Oates testified that each week a different assembly line worker was assigned the task of emptying the trash can and that the person who he asked to do so was that person. Caroon in effect denied that at that time there was a system whereby a different person was assigned each week to empty the trash cans but testified that each worker was responsible for his respective area. Oates did not identify the person who was supposedly the janitor of the week during the time in question and his testimony that a different person was assigned each week to empty the trash cans was not corroborated by any one of the several assembly line workers who testified in this proceeding. Accordingly, I reject his testimony that there was a person assigned to empty the trash cans during the week in question.

Caroon failed to explain the 6-day delay in disciplining Oates for his insubordination.

---

[15] I reject Caroon's testimony that he talked to Growt previously about not cleaning parts and adequately painting them. Growt impressed me as the more credible witness.

[16] Wiley credibly testified that this report was given to him on April 30. Caroon testified that he wrote up the report on April 16 and gave it to Wiley a day or two after he wrote it up. This is inherently implausible because the disciplinary reports in question were not even available until April 28. Thus, it is not surprising that Caroon eventually reluctantly testified that he could have possibly given the report to Wiley on April 30, as Wiley testified.

Robert Ochs

On April 30 when Robin Oates was given his disciplinary report, as described above, as soon as he observed that Caroon had recommended that he be terminated, Oates left the conference room to get his union steward Robert Ochs. When they returned to the office area, Ochs asked Caroon and Kissinger to be allowed to sit in on the meeting with Oates, but his request was refused and he was told to return immediatley to work. Ochs initially refused to leave Oates, but then returned to work, and Oates reentered the conference room by himself.

On April 30, approximately 1 hour after Ochs had unsuccessfully attempted to act as employee Oates' union steward, Ochs was summoned to the conference room where, in the presence of Caroon and Kissinger, he was issued three disciplinary reports signed by Caroon and Kissinger. Two were dated April 28 and one was dated April 29.[17] Kissinger rejected Caroon's recommendation that Ochs be terminated but instead placed him on 15 days' probation.

In one of the disciplinary reports dated April 28 Caroon wrote that Ochs was observed by himself and Stinson on April 27 not wearing safety glasses while hammering an upper steering arm during the installation of tube support brackets and recommended that Ochs be warned. On the disciplinary report dated April 29 Caroon wrote that Ochs was observed on April 28 by himself and Stinson not wearing safety glasses while removing a bolt using a steel chisel and hammer and recommended that Ochs be terminated.

Ochs testified that, prior to the receipt of the aforesaid disciplinary reports on April 30, he was never warned by anyone for not wearing safety glasses and that as a matter of fact he always wore safety glasses and specifically denied engaging in the conduct attributed to him in the two disciplinary reports. Caroon testified he personally observed that Ochs was not wearing safety glasses during the times set out in the two disciplinary reports and testified that, since he had observed him not wearing safety glasses several times previously, he had written the disciplinary reports. On cross-examination Caroon inconsistently testified that he did not observe Ochs fail to wear the safety glasses on the day set forth in the disciplinary reports but that Stinson was the only person who observed this. Since I find that Ochs, in terms of his demeanor, was a more credible witness than Caroon, I have rejected Caroon's testimony and credited Ochs' testimony that he in fact always wore his safety glasses and prior to the two reports issued to him herein had never been warned about not wearing safety glasses.

In the second disciplinary report dated April 28 Caroon wrote that Ochs was "failing to perform his work adequately" based upon production records and Caroon's observation and recommended that Ochs be given a warning. In support of this allegation Caroon testified that during the time in question he observed Ochs was taking significantly longer to perform his assembly work than was normal, that both himself and Stinson had indicated to Ochs that they thought he was falling behind the production schedule and needed to pick up his pace, and that in reply Ochs stated he was having problems installing certain parts. Ochs did not deny Caroon's testimony.

Randy Anderson

On May 28 employee Anderson was observed installing a part by Assistant Assembly Line Supervisor Stinson using an ordinary wrench rather than a torque wrench as called for by Respondent's installation manual. Stinson directed Anderson to use a torque wrench and Anderson promptly complied with this instruction. Later that day Supervisor Caroon called Anderson into the Company's conference room where, in the presence of Plant Manager Kissinger, he gave Anderson a copy of a disciplinary report signed by Caroon and Kissinger. In this report Caroon wrote that "[Anderson] is failing to follow written assembly procedures" inasmuch as he was "not torquing required components" and recommended that Anderson be placed on 1 week's probation. Kissinger rejected this recommendation but informed Anderson that the next incident of this type would result in his termination.

Caroon testified that a few days prior to May 28 Anderson was observed using a regular wrench to install a part when he should have been using a torque wrench. When asked what if anything Caroon stated to Anderson at that time, Caroon testified "I would have said something to the effect that he knows better than to not torque the fitting or the nut." In presenting this testimony, Caroon, in terms of his demeanor and the manner of his testifying, did not impress me as a credible witness. Anderson credibly testified that his May 28 reprimand was the first reprimand he had ever received while employed by Respondent.

9. In June 1981 Respondent, with the Union's permission, resumes granting employees periodic wage increases

Respondent's policy is to review an employee's rate of pay after the first 3 months of employment, again after the next 3 months, and thereafter every 6 months. When the Union demanded recognition and filed its representation petition in February 1981, Respondent, upon the advice of its attorney, ceased conducting these periodic employee wage reviews, thus, when collective-bargaining negotiations between Respondent and the Union commenced in April 1981 the employees' wages had been frozen for approximately 4 months.

The first negotiation session was held on April 23 at which time the Union submitted a contract proposal which included a wage proposal. During the May 12 bargaining session Respondent, on the subject of wages, countered with a proposal that pay rates "shall be the rates which were in effect April 1, 1981, or date of hire, whichever is later" and that "a performance and wage review for each employee shall be held on or near the employee's anniversary date, yearly or more frequently, at the employer's discretion."

[17] Ochs credibly testified that he was given the three disciplinary reports on April 30. Caroon testified that he probably gave Ochs the April 28 disciplinary reports on that date but admitted he had no independent recollection about this matter and thereafter admitted that he possibly may have given Ochs all three disciplinary reports on April 30.

Several of Respondent's employees who were scheduled to be reviewed for a wage increase in May or June asked Respondent's officials whether their reviews would take place as scheduled. In response Respondent on May 11 notified the employees that the Union was the employees' exclusive bargaining representative for purposes of pay and wages and that because of this "no employee performance or wage reviews will occur with individual employees of the bargaining unit."

During the May 12 negotiation session the subject of Respondent's periodic wage reviews was discussed. Union Representative Cline, the Union's spokesperson, stated that during the parties' contract negotiations the Union did not object to individual employees receiving wage increases pursuant to Respondent's periodic wage reviews. Michael Riccelli, Respondent's spokesperson, expressed his fear that the Union would file unfair labor practice charges against Respondent if it granted employees pay raises. Riccelli asked that Cline send him a letter confirming his lack of opposition to Respondent's holding its usual employee wage reviews. Accordingly, by letter dated May 19, 1981, Cline informed Riccelli:

> Pursuant to our conversation on the evening of May 12 concerning the granting of annual wage reviews.
>
> The Union agrees that the employees who are eligible for their annual wage reviews should receive them, without further delay, due to on going negotiations.
>
> The Union does reserve the right during the course of negotiations to demand additional increases to fully compensate those employees who have been granted increases during the interim period.

Thereafter, as will be discussed *infra*, Respondent went ahead and resumed conducting individual employee performance and wage reviews as it had done in the past and pursuant to these reviews granted employees pay raises. The Union did not understand the formula being used by Respondent to grant these increases and during the months of June and July requested information from Respondent about the subject. So, at the July 22 bargaining session, Respondent's negotiators furnished the Union's negotiators with two documents which it stated showed how Respondent was computing the individual employees' pay raises. Both documents were confidential memos from Plant Manager Kissinger to President Hanson on the subject of "pay rate guidelines" dated January 5 and June 1, 1981, respectively. Respondent's negotiators were unable to answer several questions asked by the Union's negotiators about these guidelines. They explained that it was Plant Manager Kissinger's formula and that Respondent's negotiators did not understand it and would contact the Union at a later date about the matter.

In February 1981 when Respondent stopped conducting its periodic employee wage reviews and froze its employees' wages on account of the question concerning union representation pending before the Board, Respondent's policy was to grant employees pay raises every 3 months during their first 6 months of employment and thereafter every 6 months. Respondent computed the amount of an employee's pay raise during these intervals using a "pay rate guideline," formulated by Plant Manager Kissinger which established a monthly starting rate of pay for each job classification and the maximum rate for each classification at the end of 3 months, 6 months, and 12 months. For example, pursuant to the guideline the rate of pay for an employee employed as a laborer was as follows: Starting rate—$900 per month; 3-month review—$975 per month maximum; 6-month review—$1,015 per 6-month maximum; and 1-year review—$1,070 per month maximum. The maximum monthly rate of pay for each job classification was computed on a 12-month basis, as follows: A 12-percent cost-of-living factor; a 3-percent employment tenure factor; and a 3-percent merit factor. In other words, as Kissinger testified, at the end of the first 3 months of employment an employee's pay raise was computed based upon the employee's starting rate of pay multiplied by a 3-percent cost-of-living factor, a 1-percent employment tenure factor, and a 1-percent merit factor.[18] The only discretionary factor used in this formula was the merit factor which was awarded only if the worker's productivity was regarded as sufficient to warrant a merit increase.

On June 1, 1981, Respondent replaced the above-described formula, which had been developed by Kissinger with a new one also developed by Kissinger. Pursuant to the new formula the employees' periodic wage increases were to be computed as follows: the third month pay raise was based upon an employee's starting rate multiplied by a 1-percent employment tenure factor, a 2.5-percent cost-of-living factor, and a 1-percent merit factor; the 6-month pay raise was based upon the 3-month rate multiplied by a 2-percent employment tenure factor, a 2.5-percent cost-of-living factor, and a 2-percent merit factor; the 12-month pay raise was based upon the 6-month rate multiplied by a 3-percent employment tenure factor, a 2.5-percent cost-of-living factor, and a 3-percent merit factor; and the 18-month pay raise was based upon the 12-month rate multiplied by a 4.5-percent employment tenure factor, a 2.5-percent cost-of-living factor, and a 3-percent merit factor. In addition, starting rates of pay for each job classification were increased June 1, 1981, effective May 1, 1981, by 12 percent to take into account the increase in the cost-of-living during the 12-month period ending May 1, 1981.

10. Respondent's June 2 communications to its employees about their telephone privileges and their rights under the Act

On June 2 during a negotiation session Respondent's principle negotiator, Michael Riccelli, handed the Union's chief negotiator, Lee Cline, two memos to Respondent's employees from management dated June 2, 1981. One memo addressed the subject of "telephone use

[18] Obviously, based upon the aforesaid computations, a laborer would receive only $945 at his 3-month review not the $975 set out in Respondent's guidelines. Plant Manager Kissinger testified that since it was Respondent's practice to stay within the amount set out in the guidelines that the laborer would in fact receive $975 not $945.

and privileges" and the other addressed the subject of the "rights of employees." The memo dealing with the telephone reads as follows:

> In response to employee requests, RAHCO, Inc., will install a telephone for employees in the foyer between the production line and the office. Outgoing calls only can be placed, by dialing "9" and waiting for the outside dial tone.
>
> Local calls only can be made unless, due to a significant emergency, long distance calls must be made. They may be made by dialing the operator and charging the call to your home phone number or credit card.
>
> The telephone is for general use by employees during breaks and lunch periods. Use during work periods is strictly limited to legitimate emergencies.

The memo on the subject of the rights of the employees reads as follows:

> RIGHTS OF EMPLOYEES
>
> Under the National Labor Relations Act, employees have the right:
>
> To self-organization;
> To form, join, or assist labor organizations;
> To bargain collectively through representatives of their own choosing;
> To act together for the purpose of collective bargaining or other mutual aid or protection;
> To refuse to do any or all these things unless the union and the employer, in a State where such agreements are permitted, enter into a lawful security clause requiring employees to join the union.
>
> The management and staff of RAHCO, Inc. fully support your rights as described above. The management will not tolerate threats to or coercion of employees in the exercise of these rights by anyone, including RAHCO, Inc. line, supervisory staff, or managerial employees. If you feel any of your rights are being infringed upon, please contact either of the persons identified below so that the circumstances may be investigated, and any necessary corrective action, including disciplinary action can be taken.
>
> Bob Kissinger, Plant Manager, RAHCO, Inc., telephone number 467-0617 or Michael Riccelli, General Counsel, RAHCO, Inc., telephone number 467-0770, ext. 127.

Riccelli asked whether the Union would like to discuss the matters set forth in the aforesaid memos. Cline, after reading them, shoved them back across the bargaining table to Riccelli, stating that he did not intend to discuss such matters because they involved unfair labor practices pending before the Board. Riccelli stated that his purpose in submitting the memo about the use of the telephone was not to negotiate about the Union's unfair labor practice charge but to install a phone in the plant for the use of the employees. Cline repeated that he did not want to discuss the matter. And, with respect to the memo dealing with the rights of the employees, Riccelli stated that if members of management were interfering with employees' statutory rights that the parties should deal with the problem immediately in order to nip it in the bud rather than with the filing of unfair labor practice charges with the Board several months after the events. Cline responded that he did not consider what the Company was proposing to be an adequate grievance procedure. Riccelli stated it was not intended to be a grievance policy but that Respondent was only informing the employees of their "law given rights."

The negotiators thereafter during this meeting discussed other matters after Cline, in response to Riccelli's inquiry reaffirmed that the Union did not desire to discuss the matters contained in Respondent's telephone or rights of employees memos. Subsequently, when the session recessed temporarily for the Union's negotiators to caucus by themselves, Respondent posted both of the memos on the company bulletin board. When the Union's negotiators returned to the bargaining table from their caucus they indicated that they had observed that the memos had been posted on the bulletin board. Cline indicated that the Union would take them under advisement.[19]

B. *Analysis and Ultimate Conclusionary Findings*

1. Mike Stinson's status

During the time material herein, Respondent's assembly line was operated by approximately 11 employees plus Assembly Line Supervisor Bruce Caroon, who was admittedly a statutory supervisor, and Assistant Assembly Line Supervisor Michael Stinson.[20] The assembly line has five separate stations and is 180 feet long. Prior to the time material herein the assembly line consisted of as many as 10 stations and employed as many as approximately 50 employees. Since December 1980 it has operated with 5 stations and approximately 11 employees.

Stinson was hired as an assembler on June 2, 1980, and approximately 2 weeks later was promoted to the position of assistant assembly line supervisor. At the time Plant Manager Kissinger informed the employees who worked on the assembly line that Stinson was "in charge of taking care" of the first part of the assembly line and Caroon the end of the assembly line. Caroon, the assembly line supervisor, informed the assemblers that if they worked on stations at the start of the assembly line that they should speak to Stinson about their work problems rather than to Caroon, but that he, Caroon, was the "overall" supervisor of the assembly line. Stinson was introduced by Caroon to assembler Wiley, who worked at a station at the front of the line, as the assistant line su-

[19] Union Representative Cline and employees Ochs and Wentworth testified for the General Counsel about the June 2 bargaining session. Riccelli testified on behalf of Respondent. The description of what went on at the meeting is based upon Riccelli's testimony which, in significant part, is corroborated by Wentworth's testimony. In terms of his demeanor Riccelli impressed me as a more credible witness than Cline or Ochs regarding the events which took place on June 2.

[20] Respondent's payroll records (G.C. Exh. 24) show that Respondent classified Stinson as "assistant line supervisor."

pervisor who Caroon stated, "commanded all the respect and responsibility that [Caroon] did."

During the time material herein, Stinson spent approximately 10 percent of his working time doing manual work like the assemblers;[21] wore a gold hard hat, the same color hat as is worn by representatives of Respondent who are admittedly members of management and statutory supervisors; was paid at least $100 a month more than assemblers with comparable seniority; and was regarded by the assemblers who worked the stations located at the start of the assembly line as their supervisor. The record also establishes that Stinson granted permission more than once to one of these employees to absent himself from work, without consulting anyone from management.

During Caroon's absences from work Stinson substituted for him, but Caroon was rarely absent. He was present 95 percent of the time. There is no evidence that during Caroon's absences that Stinson was delegated the same authority as Caroon or in fact exercised such authority.

In performing his duties as assistant line supervisor, Stinson, as indicated *supra*, supervised the first part of the assembly line and in doing so spent his time as follows: doing paperwork; answering employees' questions; correcting employees' work; telling employees what to do; keeping the employees under surveillance to make sure they were working rather than loafing and doing their work correctly; supplying employees with parts; reassigning employees from one station to another station; and generally taking care of problems which arose on the assembly line so that production was not delayed. It is undisputed that when Stinson issued directions or orders to employees that the employees were required to obey him or face discipline for insubordination and that the employees knew this.

The record also establishes that the work performed on the assembly line was of a routine nature. It was repetitious and monotonous work which did not require any discretion on the part of the assemblers. In fact, each station had a copy of a manual which set out in detail the manner in which each assembler was to perform his job; i.e., which tool to use to install a part.

Under Section 2(11) of the Act, the term "supervisor" includes:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proving supervisory status rests on the party alleging that such status exists. *Tucson Gas & Electric Company*, 241 NLRB 181 (1979), and cases cited therein. While it is established that the possession of any one of the functions enumerated in Section 2(11) is sufficient to establish supervisory status, Section 2(11) requires, however, that a supervisor must perform these functions with independent judgment as opposed to in a routine or clerical manner. *Walla Walla Union-Bulletin, Inc.* v. *N.L.R.B.*, 631 F.2d 609, 613 (9th Cir. 1980); *N.L.R.B.* v. *Harmon Industries, Inc.*, 565 F.2d 1047, 1049 (8th Cir. 1977); *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.2d 143, 147 (5th Cir. 1967).

The General Counsel does not contend nor is there evidence to support a finding that Stinson, during the time material herein, possessed the authority as defined in Section 2(11) of the Act to hire, transfer, suspend, lay off, recall, promote, discharge, or reward employees or to adjust their grievances or to effectively recommend such action. The question for decision is whether Stinson possessed the authority to assign or discipline employees, or responsibly to direct them, or to effectively recommend such action and perform one or more of these functions using his independent judgment as opposed to in a routine or clerical manner.

The testimony of Plant Manager Kissinger and assembly Line Supervisor Caroon, which is not impunged by the whole record, establishes that Caroon decided upon the initial work station to which an assembler was assigned and did this without relying in whole or in part upon any recommendation voiced by Stinson. Thereafter, employees were assigned to different stations in order to relieve the monotony of the work and were temporarily reassigned to other stations when conditions warranted, i.e., work became slow at one station or help was needed at another station. The decision to reassign these workers was also made by Caroon. Although Caroon consulted with Stinson, prior to deciding to reassign employees from one station to another, there is no evidence that Caroon acted upon Stinson's recommendations without conducting an independent investigation of the situation. In fact, 50 percent of the time Caroon rejected Stinson's recommendations concerning reassignments from one station to another. Based upon the foregoing, I find that the record failed to establish that Stinson has the authority to assign employees or to effectively recommend such action.

There is no evidence that Stinson has the authority to discipline employees. The record does reveal that on several occasions employees were disciplined by Caroon and/or Kissinger because of misconduct attributed to them by Stinson.[22] In all of these cases, except for one,[23] Caroon was the person who recommended to

[21] Caroon testified Stinson spent 75 percent of his working time doing manual work. Kissinger testified Stinson spent 50 percent of his working time doing manual work. Employees Ochs, Anderson, Wiley, and Oates testified that Stinson spent approximately 10 percent of his working time doing manual work. I have credited the testimony of these employees who impressed me as more credible witnesses on this point than either Caroon or Kissinger.

[22] The reporting of employee misconduct is a matter of monitoring rather than a manifestation of supervisory authority. *Greyhound Airport Services, Inc.*, 189 NLRB 291, 293-294 (1971).

[23] In one instance, involving employee Oates, Stinson wrote up a disciplinary report recommending that Oates be issued a warning for reporting late for work after lunch. This disciplinary report was submitted to Caroon who rewrote it and although it was thereafter signed by Stinson the disciplinary report was never issued to Oates. In other words, Stinson's recommendation that Oates be disciplined was apparently not accepted.

management that the employee be disciplined. There is no evidence that in these cases Stinson made any kind of a disciplinary recommendation to Caroon or, if he did,[24] whether or not Caroon accepted or rejected it or conducted an independent evaluation to determine whether discipline was justified. In fact, Caroon testified that he, Caroon, did not discipline an employee just because Stinson informed him that the employee had engaged in an act of misconduct. Rather, Caroon testified he considered the matter independently before deciding whether to write up a disciplinary report. It is for the aforesaid reasons that I find that the record fails to establish that Stinson possesses the authority to discipline employees or to effectively recommend such action.

The record, as summarized *supra*, establishes that Stinson responsibly directs the work of the approximately five assemblers employed at the stations located at the front end of the assembly line. These assemblers are required to obey his orders or be disciplined. The record fails to establish that in directing the work of the employees that Stinson exercises independent judgment as contemplated by Section 2(11) of the Act. Rather, the record reveals that the work performed by the assemblers is of a routine and repetitious nature which does not require any discretion. In fact, at each work station there is a detailed manual which instructs the assemblers how to do their jobs. Moreover, it is undisputed that the first thing in the morning and the first thing in the afternoon, after lunch, that Stinson consults with Caroon about the work. In view of all of these circumstances, I am persuaded that when Stinson directs the work of the assemblers and tells them what to do he is acting in a routing and clerical fashion and does not exercise the type of independent judgment contemplated by Section 2(11) of the Act. Nor does he exercise that type of independent judgment when he exercises his role as policeman in making sure workers are working rather than loafing or otherwise obey established company policy.[25] It is for the foregoing reasons that I find that the record fails to establish that Stinson responsibly directs the work of the employees using his independent judgment.

Based upon the foregoing, I find that the General Counsel has failed to establish that Stinson possessed any of the indicia of supervisory authority enumerated in Section 2(11) of the Act. In so concluding I have considered that Stinson was clothed with several secondary supervisory indicia, as follows: he was classified as "assistant line supervisor";[26] he wore a gold hat, the color hat worn by persons who are admittedly a part of management; he was paid more money than the other assemblers;[27] he authorized one assembler to be absent from work on several occasions without consulting management; and was regarded by the persons whose work he supervised as their supervisor. Nevertheless, I am persuaded that these secondary indicia of supervisory status whether viewed separately or together are insufficient to support a finding of supervisory status within the meaning of Section 2(11) of the Act where, as here, there is no evidence that Stinson possessed at least one of the supervisory powers enumerated in Section 2(11). Under the circumstances to base a finding of supervisory status upon secondary indicia would be contrary to the statute because of the courts, with the approval of the Board have instructed me," [i]t is important for the Board not to construe supervisory status too broadly, for a worker who is deemed a supervisor loses his organizational rights." *McDonald Douglas Corp.* v. *N.L.R.B.*, 655 F.2d 932 (9th Cir. 1981). Accord: *Westinghouse Electric Corporation* v. *N.L.R.B.*, 424 F.2d 1151, 1158 (7th Cir. 1970) (the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect).

It is for all of the foregoing reasons that I find that the record, as a whole, does not establish that Stinson is a supervisor within the meaning of Section 2(11) of the Act.

The fact that Stinson is not a statutory supervisor does not by itself preclude attributing his conduct to Respondent. Respondent may still be held responsible for Stinson's conduct if employees could reasonably believe that Stinson was acting on behalf of Respondent because of the position Respondent placed him. E.g., *Helena Laboratories Corp.*, 225 NLRB 257 (1976), enfd. in pertinent part 557 F.2d 1183 (5th Cir. 1977); *Broyhill Company*, 210 NLRB 288, 284 (1974), enfd. 514 F.2d 655 (8th Cir. 1975). Here, Stinson, pursuant to Respondent's authorization, regularly directed employees' work and Respondent had placed the employees on notice that they were expected to obey Stinson's directions. Moreover, Stinson acted as assembly line supervisor in Caroon's absence, albeit this occurred very rarely, and Stinson wore a gold hat which was the emblem of management. In the light of these circumstances, Respondent would ordinarily be accountable for Stinson's conduct, although he is not a statutory supervisor, since Respondent placed Stinson in a position whereby the employees would have just cause to believe he was acting and on behalf of management.

2. Assembly Supervisor Caroon's conduct[28]

(a) *On March 24 Caroon speaks to employees about the layoff*

On March 19 a majority of Respondent's production and maintenance employees voted in favor of union rep-

[24] I recognize that Plant Manager Kissinger testified that the normal procedure was for Stinson to recommend to Caroon that a disciplinary report be issued. But the record fails to establish that Caroon acted upon Stinson's recommendations without independently evaluating the situation.

[25] As I have found *supra*, the record fails to establish Stinson has the authority to discipline or effectively recommend that employees be disciplined for failing to obey his orders.

[26] In determining whether a person is a statutory supervisor "job titles are unimportant." *Laborers and Hod Carriers Local No. 341* [*Patrick J. Hurrell*] v. *N.L.R.B.*, 564 F.2d 834, 837 (9th Cir. 1977). Accord: *Arizona Public Service Company* v. *N.L.R.B.*, 435 F.2d 228, 231, fn. 6 (9th Cir. 1971) (the job title is "irrelevant").

[27] The disparity of compensation cannot be "accorded litmus paper significance in the absence of solid evidence of the possession of supervisory responsibility." *Oil, Chemical and Atomic Workers International Union, AFL–CIO* [*George A. Angle, d/b/a Kansas Refined Helium Company*] v. *N.L.R.B.*, 445 F.2d 237, 242 (D.C. Cir. 1971).

[28] Caroon is admittedly a statutory supervisor.

resentation. On March 24, shortly after Plant Manager Kissinger informed the employees that a group of the assembly workers were being temporarily laid off at the end of the workday due to a shortage of parts, Assembly Supervisor Caroon, as I have described in detail *supra*, informed the employees that they were being laid off because employees had voted in favor of union representation. Specifically, in response to employee Ochs' inquiry Caroon acknowledged to employees Ochs and Knutsen that in the past employees were not laid off when there was a shortage of parts, and explained to Ochs and Knutsen that "this is what you voted for when you voted for the Union." Later that same day, in the presence of several employees, Caroon, in response to an employee's inquiry as to whether or not the Union had anything to do with the layoff, replied, "you people wanted this, you voted for it, and now you've got it." When asked why the employees instead of being laid off could not clean shelves or sweep floors or stock parts or pull weeds as had been done in the past when there was a shortage of parts or a lack of work on the assembly line, Caroon informed the employees "you people got a job description now, you voted for it . . . your job description is working on the line, so you are going home."[29]

Based upon the foregoing I find that on March 24 Assembly Supervisor Caroon told employes that they were being laid off because employees had voted in favor of union representation. I further find by virtue of this conduct Respondent violated Section 8(a)(1) of the Act.

(b) *Caroon's April conversations with employee Albert*

As I have described in detail *supra*, during April Caroon had three separate conversations with employee Albert in which he expressed certain threats. On April 10 Caroon told Albert that Respondent's president, Hanson, intended to contract out Respondent's work thus causing Caroon and the employees to lose their jobs. Caroon explained to Albert that he thought Hanson's reason for engaging in this conduct was that Hanson was afraid that the Union would organize Respondent's parent company which was located next door. Caroon told Albert that he thought everything would return to normal if the employees revoted and voted the Union out and suggested that Albert solicit other employees to vote against the Union. During this conversation Caroon also stated that President Hanson did not care whether employees ever got a contract. Thereafter, 4 days later, Caroon informed Albert that if the employees who had just been recalled from layoff did not have "a change of heart" in a hurry that it would be "too late" and advised Albert to start a savings account. Also, later that month, Caroon informed Albert that Respondent's humane treatment of the employees had ended, that President Hanson just regarded the employees as "toys" to play with as he wished, and that Hanson intended to finish Respondent's production schedule and then lay off everyone.

Based upon the foregoing I find that in April Caroon warned employee Albert that Respondent intended to contract out the employees' work and lay them off because they had supported the Union, that the employees could avoid this layoff if they voted out the Union, and that Albert should solicit employees to withdraw their support from the Union. I further find that by virtue of this conduct Respondent violated Section 8(a)(1) of the Act. Likewise, I find that Respondent violated Section 8(a)(1) by virtue of Caroon's statement to Albert that Respondent's president did not care whether Respondent's employees ever got a contract. This statement, if viewed in isolation, would be innocuous. But, when viewed in the context of Caroon's other statements indicating that Respondent's president intended to lay off the employees if they did not vote out the Union, it was reasonably calculated to convey the idea that Respondent did not intend to bargain in good faith with the Union. As the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co.*, 295 U.S. 575, 617 (1969), has observed, any evaluation of employer language:

> . . . must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pickup intended implications that might be more readily dismissed by a more disinterested ear.

3. Warehouse Supervisor Engel's conduct[30]

On March 24, as described in detail *supra*, Warehouse Supervisor Engel informed employee Ochs that Plant Manager Kissinger intended to "make it very, very rough" on the employees who supported the Union. I find that by Engel's March 24 warning to employee Ochs that Respondent intended to make it very rough on the employees because they had supported the Union, Respondent violated Section 8(a)(1) of the Act.[31]

On April 1, as described in detail *supra*, Engel informed employee Wentworth that Respondent intended to make the employees so miserable that they would get mad and quit their employment thereby allowing Respondent to replace them with employees who were not union sympathizers. I find that Respondent violated Section 8(a)(1) by Engel's April 1 statement to employee Wentworth that Respondent intended to replace its current employees who voted in favor of union representation with antiunion employees by making working conditions so miserable for the current employees that they would quit.

[29] Prior to the union election Respondent's president, in an effort to persuade the employees to vote against union representation, told them, among other things, that, "we encourage workers to use their talents, where they best can . . . . as opposed to typical unionized organizations which often assign their workers to singular job descriptions . . . because of a straight jacket labor contract." (G.C. Exh. 19.)

[30] Engel is admittedly a statutory supervisor.

[31] This finding is not encompassed by a specific allegation in the complaint. However, Ochs' testimony about his March 24 conversation with Engel was presented without objection and Respondent in its case-in-chief questioned Engel about this conversation. In other words the issue was fully litigated.

4. Assistant Line Supervisor Stinson's conduct

On or about May 18, as described in detail *supra*, Stinson questioned four employees about their union dues; he asked them whether they were paying union dues. I have found *supra*, although Stinson was not a statutory supervisor, Respondent had placed him in a position so that the employees under ordinary circumstances would reasonably believe that when he spoke to them about the Union that he was speaking on behalf of management. However, the circumstances surrounding his interrogation of the employees about their union dues are sufficient to warrant the inference that the employees would *not* have reasonably believed that Stinson, when he questioned them about their dues, was speaking on behalf of management. Thus, shortly before he questioned the employees, Stinson had been solicited by both the Union and individual employees to join the Union and pay union dues. In fact, it was common knowledge among the employees that Stinson had been invited to join the Union and pay union dues. In view of these circumstances I am of the opinion that Stinson's interrogation of the employees did not violate Section 8(a)(1) of the Act, as alleged in the complaint, and I shall recommend that this allegation be dismissed.

5. The March 23 changes in the employees' environment

On March 23, as described in detail *supra*, when Respondent's employees arrived for work they discovered several changes in their work environment.

The employees could no longer enter the plant 10 to 15 minutes prior to the start of work in the morning as had been their custom. The outside door leading to the production area was now locked until 5 minutes before work started, thus forcing the employees to wait in their automobiles for 5 to 10 minutes before entering the plant.[32]

The employees could no longer enter the warehouse office or the quality control cage nor could they any longer enter the main office without the written permission of their supervisors. Previously the employees had unlimited access to the main office, the quality control cage, and the warehouse office.

The employees could no longer get the materials and equipment they used in their work, which was locked up, without going to their supervisors because on March 23 Respondent took away the employees' keys. Now the employees were required to go to their supervisors each time they needed equipment and materials which were locked up.

The employees' use of the telephone during lunch and break periods was now limited to emergency phone calls whereas previously during lunch and break periods the employees could make any kind of a telephone call. Also, employees previously had asked an office clerical for permission to use the phone which was located in the main office whereas now they were required to get written permission from a supervisor to use the phone.

The aforesaid changes instituted by Respondent on March 23 affected virtually every one of Respondent's employees who were represented by the Union and, in their totality, adversely affected the employees' work environment in a significant way. The changes were abruptly instituted on the morning of March 23 without explanation to the employees. The changes took place the first working day following the March 19 representation election in which, despite Respondent's announced opposition, a majority of the employees had voted in favor of union representation. Also, the changes were made during the same period of time that Warehouse Supervisor Engel was informing employees Ochs and Wentworth that Respondent intended to "make it very, very rough" on the employees for supporting the Union and that its aim was to replace the current work force that had voted in favor of union representation with employees who were not sympathic to the Union by the device of making working conditions so miserable that the current work force would quit. These circumstances persuade me that the General Counsel has made a *prima facie* showing that it was a desire to retaliate against the majority vote for union representation that was a motivating factor in Respondent's decision to institute the above-described March 23 changes in the employees' work environment.[33]

I shall now describe and evaluate the evidence presented by Respondent in support of its contention that the March 23 changes would have been instituted even in the absence of the employees' vote for union representation. Respondent's principle witness was Plant Manager Kissinger, the person who made the decision to institute each of the changes. Initially, I am constrained to note that in testifying about his reasons for instituting these changes that Kissinger, in terms of his testimonial demeanor, did not impress me as a credible witness. In addition, an evaluation of Kissinger's testimony, in the light of the whole record, reveals that it is unworthy of belief.

Kissinger testified that his reason for taking the keys away from the employees on March 23 was to prevent the theft of tools. He testified that there had been a lot of tools stolen from the plant and that his decision to take the employees' keys was triggered by Assembly Line Supervisor Caroon's report to him on March 19 that an expensive air grinder was missing from the assembly line. Caroon contradicted this testimony. Caroon testified that the air grinder in question was not missed until sometime after March 24, several days after Kissinger's decision to take away the employees' keys was instituted.[34] More-

[32] The outside door leading to Respondent's main office was unlocked at the usual time, but employees on March 23, as described *infra*, were also forbidden to enter the main office without the permission of their supervisors. Respondent did not inform employees that if they arrived in the morning before the outside door to the production area was unlocked that they could use the door to the main office to enter the plant without their supervisor's permission.

[33] The fact that the changes adversely affected both pro and anti union employees, under the circumstances herein, does not detract from the General Counsel's *prima facie* case. See *Dillingham Marine and Manufacturing Company, etc.*, 610 F.2d 319, 321 (5th Cir. 1980), and cases cited therein.

[34] I recognize that Respondent's general counsel, Riccelli, testified that on March 19 or 20 Kissinger, in a casual conversation, mentioned the missing air grinder to Riccelli. This testimony was not corroborated by

Continued

over, the record shows that, as Kissinger must have realized, Kissinger's instruction that the employees could no longer possess the keys to the various storage areas in the plant was not calculated to prevent the theft of tools. The only tools kept under lock and key are Respondent's spare tools. The great majority of the tools in the plant are kept at the various assembly line stations on tool carts or hang from the walls. As a matter of fact, the expensive missing air grinder which Kissinger testified triggered his decision to take away the employees' keys was located at one of the assembly line stations. Kissinger admitted that the theft of this grinder could not have been prevented by the new policy whereby keys to the storage areas were no longer allowed in employees' possession. In addition, the record establishes that the problem of missing tools existed for several months prior to the start of the Union's organizational campaign and that prior to the Union's campaign the problem was viewed with considerable concern by Kissinger. Kissinger failed to explain why, in view of his concern, he failed to take the keys from the employees at that time. The answer lies, I believe, in the fact that the missing tools were not kept under lock and key. Finally, I am persuaded that, if Kissinger took the keys away from the employees for the legitimate reason he advanced at the hearing herein, at the time the employees were told to turn in their keys on March 23 that Kissinger or some other member of supervision would have given them this as the explanation for this new policy, rather than silence. It is for all of the aforesaid reasons that I am persuaded that Kissinger's explanation given at the hearing for taking away the employees' keys was false.

Kissinger testified that his decision to keep the outside door leading to the production area locked until 5 minutes before starting time each morning was motivated by the same reason as his decision to take away the keys from the employees. Since I have found *supra*, that Kissinger's reasons for taking the keys away from the employees was a sham, I reject his identical explanation for deciding to keep the outside door to the plant's production area locked until 5 minutes before the start of the shift.

Kissinger testified that he decided to limit the employees' access to the main office, the warehouse office, and the quality control cage because the employees, since at least June 1980, were continually leaving their work stations and going into these areas when they should have been working and that Kissinger spoke to them about this on several occasions during regularly scheduled shop meetings. Kissinger did not explain why, during the several months prior to the start of the Union's organizational campaign when this misconduct was taking place, Kissinger had not taken the action he took on March 23 to put a stop to it. In fact, the record shows that, in March 1980 when the person in charge of quality control recommended to Kissinger that the quality control cage be placed off limits to the employees who were not assigned to work there, Kissinger rejected this recommendation and the practice of employees entering the quality control cage continued. Also, I am persuaded that, if Kissinger's reason for preventing the employees' access to the quality control cage and warehouse office and limiting their access to the main office was based upon legitimate business considerations, supervision would have explained to the employees the reasons for these restrictions when they were placed into effect rather than staying silent. It is for these reasons that I reject Kissinger's explanation for his motivation in instituting the rule prohibiting employees from entering the quality control cage and warehouse office and restricting them from entering the main office without written permission from a supervisor.

Kissinger testified that the reason he instituted the system whereby employees had to get written permission from their supervisors to use the plant telephone was that employees in the past had abused the use of the telephone.[35] Kissinger testified that this abuse of the phones by the employees existed from the time Respondent began its business operation in 1979 and that the Company's switchboard operator was continuously complaining to him that she was spending all of her time giving employees outside phone lines. Kissinger did not explain why, despite the employees' abuse of the phones for more than 1 year prior to the start of the Union's organizational campaign, he did not, prior to the Union's campaign, take the step he took on March 23 to remedy this abuse. Also, I find it difficult to believe that if Kissinger had a legitimate reason for instituting the requirement that employees get written permission form supervision to use the phone that he would not have given explanation to the employees when the employees were informed of this new rule. Kissinger failed to explain why this explanation was not given to the employees when the rule was instituted. It is for these reasons that I reject Kissinger's justification for instituting the policy whereby employees were required to get written permission from supervision to use the company phone.

It is for the foregoing reasons, including my observation of Kissinger's poor demeanor while testifying about the new rules instituted on March 23, that I have rejected his testimony and conclude that the reasons he advanced to support the changes were false. Accordingly, I further find that Respondent failed to demonstrate that it would have instituted the above-described March 23 changes in the employees' work environment even if the employees had not voted in favor of union representation.

Based upon the foregoing, I find that the General Counsel has proven by a preponderance of the evidence that on March 23 Respondent was motivated by a desire to punish employees because they voted in favor of union representation when it instituted several new policies which, taken in their entirety, significantly changed the employees' work environment in a manner detrimen-

Kissinger. This, plus the fact that Riccelli did not impress me as a convincing witness when he gave this testimony, plus Caroon's unequivocal testimony that the air grinder was not missed until after the March 24 layoff, has led me to reject Riccelli's testimony.

[35] Kissinger did not explain why, on March 23, Respondent's supervisors informed the employees that they could no longer make phone calls during their lunch and break periods unless said phone calls were for an emergency, whereas, previously there was no such limitation upon the use of the phone during nonworking time.

tal to the employees. These new policies were as follows: prohibiting employee access to the plant until 5 minutes before starting time; prohibiting employee access to the quality control cage and warehouse office; requiring employees to get written permission from their supervisors in order to enter the main office or to use the company telephone located in the main office; taking away the employees' keys to the storage areas where their equipment and materials were locked up; and prohibiting employees from using the company telephone during lunch or break periods unless it was for an emergency. I further find that by engaging in this conduct Respondent violated Section 8(a)(1) and (3) of the Act.

I also find that by making the above-described changes which significantly affected the employees' work environment, without first notifying the Union and affording the Union an opportunity to bargain over the changes, but instead on the first working day after the Union's election victory, placing into effect the changes, Respondent violated Section 8(a)(5) and (1) of the Act.[36] *Bralco Metals, Inc.*, 214 NLRB 143 (1974). In so concluding I have considered whether each of the changes instituted on March 23 affected employees' "conditions of employment" as that term is used in Section 8(d) of the Act. I am of the view that Respondent's conduct in prohibiting employees from using the telephone during their nonworking time for other than emergency phone calls and from using the phone without the written permission of their supervisors affected a significant and substantial change in a condition of employment. But, the remaining changes instituted on March 23 which prohibited employee access to the plant until 5 minutes before the start of the workshift prohibited employee access to the quality control cage and warehouse office, prohibited employee access to the main office without permission from their supervisors, and required employees to go to their supervisors each time they had to get equipment and materials which were locked up did not, when viewed separately, affect significant and substantial changes in the employees' conditions of employment. However, it would be unrealistic to view these changes separately. Each one of the changes must be viewed in the manner in which it was instituted by Respondent, as part of one package,[37] when taken together, substantially affects the employees' work environment and constitutes a significant and substantial change in their physical work environment. Cf. *Bralco Metals, Inc., supra*, 214 NLRB 143, 149, fn. 9.

6. The April 1 change in the employees' workweek

From the time Respondent commenced business in November 1979 until April 1981 its employees worked four 10-hour days a week, Monday through Thursday. On April 1, pursuant to a decision made by Plant Manager Kissinger, this work schedule was changed to five 8-hour days, Monday through Friday. The change affected every employee represented by the Union and constituted a significant and substantial change of an existing term and condition of employment. The employees' workweek occurred less than 2 weeks following the representation election in which a majority of the employees, despite Respondent's announced opposition to union representation, voted in favor of union representation. One week prior to the change in work schedule Plant Manager Kissinger, as I have found *supra*, instituted several other changes in the employees' work environment for the purpose of punishing them for voting for union representation and, during the period of time material herein, as I have also found *supra*, Supervisors Caroon and Engel informed employees that Respondent, Kissinger in particular, intended to make the employees' working conditions onerous because the employees voted in favor of union representation. Also, as I have found *supra*, Supervisor Caroon, prior to the election, warned an employee that if the employees voted in favor of union representation that Respondent would take away their 3-day weekend.[38] These circumstances persuade me that the General Counsel has made a *prima facie* showing that it was a desire to retaliate against the majority vote for union representation that was a motiviating factor in Respondent's decision to change the employees' workweek from a 4- to a 5-day workweek.[39]

Plant Manager Kissinger, the person who decided to change the employees' work schedule from four 10-hour days to five 8-hour days, testified he did this in order to make up for the lost production suffered on account of the March 24 layoff and because a five 8-hour day week was more efficient than a four 10-hour day week in terms of worker productivity. With respect to his desire to recoup the production lost on account of the layoff Kissinger testified that before the change in the employees' workweek the assembly line workers were expected

[36] It is undisputed that Respondent unilaterally instituted the March 23 changes without first notifying and bargaining with the Union about them. It is settled law that an employer, such as Respondent, which is obligated to bargain in good faith with the Union has a correlative duty not to unilaterally change established employment conditions without first consulting and bargaining with the Union. *N.L.R.B.* v. *Benne Katz, etc. d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736, 743 (1962). The obligation to refrain from making unilateral changes in employees' conditions of employment is applicable even between the date of the Union's election victory and the Board's certification of the Union's victory, especially where, as in the instant case, no objections to the election were filed by Respondent. See *Mike O'Connor Chevrolet-Buick-GMC Co., Inc., et al.*, 209 NLRB 701 (1974). Accord: *Anchortan, Inc.* v. *N.L.R.B.*, 618 F.2d 1153, 1156–57 (5th Cir. 1980); *N.L.R.B.* v. *Allied Products Corp., Richard Bros. Div.*, 629 F.2d 1167 (6th Cir. 1977).

[37] Plant Manager Kissinger, the person who was responsible for instituting the March 23 changes, testified in effect that each one of the aforesaid changes were instituted by him as a part of a single plant designed to "control" the employees.

[38] In evaluating Respondent's motivation for changing the employees' workweek, I have not, as suggested by the General Counsel, considered Assistant Line Supervisor Stinson's statements to several employees that the reason for the change in the workweek was because the employees voted in favor of union representation. Stinson, as I have found *supra*, is not a supervisor within the meaning of Act. While his comments may be sufficient to coerce and restrain employees from exercising their Sec. 7 rights because of the position Respondent has placed him in, I do not believe that this is sufficient to attribute his remarks to Respondent for purposes of evaluating Respondent's motivation.

[39] Under the circumstances, the fact that the change in the employees' work schedule adversely affected both pro- and antiunion employees does not detract from the General Counsel's *prima facie* case. See *Dillingham Marine and Manufacturing Company, etc., supra*, 610 F.2d 319, 321, and cases cited therein.

to produce one combine a day whereas under the new workweek they were still expected to produce one combine a day even though they worked 2 hours less a day, therefore increasing production by one unit a week, and, with respect to the employees' efficiency, Kissinger testified that employees who worked a 10-hour day are not as efficient workers as those who work an 8-hour day because the employees who work the 10-hour day do very little work during the last hour and the equality of the work which is done during that last hour is inferior. I am of the opinion that Kissinger's testimony concerning his motivation for changing the employees' workweek is not credible.

Kissinger, who was Respondent's plant manager when it began operation in November 1979, was employed immediately prior to this in a management position by Respondent's parent company. Respondent's parent company for a considerable period of time has used a four 10-hour day workweek. Kissinger testified that his experience with this work schedule when employed by the parent company demonstrated to him that the time of the last hour each day that the employees had slowed down considerably and did not work efficiently. Kissinger further testified that despite this knowledge he decided to utilize the four 10-hour day workweek at Respondent inasmuch as this was the work schedule that the parent company was using and Kissinger felt comfortable with that system. In other words, for the first 15 months of Respondent's operation, prior to the start of the Union's organizational campaign, Kissinger used the four 10-hour day workweek to operate the assembly line even though he knew it was not as efficient as a five 8-hour day workweek. Presumably, as was the case with the management officials who operated Respondent's parent company, Kissinger felt that there were other benefits to this system, i.e., employee morale and the recruitment of superior workers, which outweighed the fact that a certain amount of efficiency was lost during the last hour of work. In view of these circumstances Kissinger's explanation for abruptly abandoning the four 10-hour day workweek immediately after the Union's election victory does not ring true.

An examination of the record reveals that the change in the workweek from four 10-hour days to five 8-hour days was not necessary to Kissinger's plan to increase productivity. It reveals that the essential ingredient in Kissinger's plan to increase productivity was his decision to speed up the production line, a decision unrelated to the number of days that the employees work each week. On April 13 when the workers returned from their layoff and production resumed, the assembly line workers were required to do the same amount of work in 8 hours as they have previously been expected to do in 10 hours. Thereafter, approximately 1-1/2 weeks later Kissinger increased the production requirement so that the employees were now expected to produce in 6-1/2 hours what they had been expected to produce in 10 hours when they had been working for 10-hour days. It is significant that Kissinger failed to testify why he did not adjust the production requirement for the production workers, as described above, while at the same time retaining the 4-day workweek.

Respondent's records show that during December 1980 the average number of hours that it took an employee to produce a combine steady increase from 96 hours per unit to 106 hours per unit by the end of the month and that, during 3 of the 4 weeks during this period, the workers failed to produce their quota of four combines a week. In fact, during one of these weeks only two combines were produced. Thereafter, during the 3-week period in January, prior to the date the Union filed its representation petition on February 2, the average productivity per worker did not improve. Nonetheless, Kissinger, during this period, prior to his knowledge of the Union's organizational campaign, did not change the employees' workweek despite the obvious gradual decrease in efficiency. As a matter of fact if Kissinger's testimony is taken at face value, by not acting at that time to change the workweek from four 10-hour days to five 8-hour days, he violated his normal code of conduct. Thus, Kissinger testified that he first suspected that a 4-day workweek was not an efficient way to operate as early as December 1980[40] at which time, based upon certain weekly production reports, he observed a gradual decrease of average productivity per worker from 96 hours per unit to better than 100 and further testified that "we were going up in hours steady, and that is always been my policy on that line when that type of thing happened I make some sort of change" (Resp. Exh. 6). Kissinger admittedly made no changes at this time and failed to explain why at this time he did not change the workweek from four 10-hour workdays to five 8-hour workdays in order to improve efficiency. In fact, there is no evidence that Kissinger took any steps at that time to increase the efficiency of the employees either by way of speeding up production or by other means. I recognize that Kissinger testified that the reason he did not change the employees' work schedule prior to April 1 was that he had been instructed not to make any changes in employees' conditions of employment while the Union's representation petition was pending. But, as I have described above, the efficiency problem was readily apparent to Kissinger long before Kissinger knew about the Union's organizational campaign, yet, Kissinger, for some unexplained reason, took no steps at that time to remedy the situation.

It is for the foregoing reasons, including my observation of Kissinger's poor demeanor while testifying about his motivation for changing the employees' work schedule, that I have rejected his testimony that in changing the employees' work schedule that he was motivated by a desire to increase productivity and employees efficiency. Accordingly, I find that Respondent has failed to demonstrate that it would have instituted the April 1 change in the employees' work schedule even if the employees had not voted in favor of union representation.

Based upon the foregoing I find that the General Counsel has proven by a preponderance of the evidence that Respondent was motivated by a desire to punish the employees because they voted in favor of union repre-

[40] This is inconsistent with Kissinger's other testimony that based upon his past experience with the four 10-hour day workweek that he always knew that it was not an efficient way to operate a production line.

sentation when on Apirl 1 Respondent changed the employees workweek from four 10-hour days to five 8-hour days. I further find that by making this change in the employees' hours of employment without first notifying the Union and affording it an opportunity to bargain about the change,[41] which was a significant and substantial change in the employees' terms and conditions of employment,[42] Respondent violated Section 8(a)(5) and (1) of the Act.

7. The March 24 layoff

(a) *The General Counsel's prima facie case*

Despite Respondent's announced opposition to union representation, a majority of its production and maintenance employees voted in favor of union representation on March 19 in the Board-conducted election. On March 24, the second working day following the election, Respondent laid off 13 of the approximately 20 production and maintenance employees, informing them that they were being laid off that day due to a shortage of parts. The layoff occurred during the middle of the workweek with no advance notice given to the employees and at a time when Respondent's sole customer, International Harvester, was pressing Respondent to furnish it with combines. Previously employees had not been laid off when there was a parts shortage or the assembly line was shut down. On March 24, within 1 hour after the annoucement of the layoff, the supervisor of the assembly line employees, Bruce Caroon, acknowledged to the employees that in the past when they were unable to do assembly work they had not been laid off but, explained to them, that they were now being laid off because the employees voted in favor of union representation. The day immediately prior to the layoff Respondent instituted new policies which made the employees' work environment more onerous in several respects and 1 week after the layoff changed the employees' workweek from four 10-hour days to five 8-hour days and, as I have found *supra*, engaged in the aforesaid conduct in order to punish the employees for having voted for union representation. All of these circumstances persuade me that the General Counsel has made a *prima facie* showing that it was a desire to retaliate against the majority vote for union representation that was a motivating factor in Respondent's decision to lay off the employees.

(b) *Respondent's defense*

Plant Manager Kissinger testified that on March 20 he decided to lay off the employees because of a lack of four critical parts: steering cylinders; beater house bushings; hydraulic filter assemblies; and jackshafts. He testified that Purchasing Agent McCauley informed him about the shortage of these parts and advised him that the vendors of the parts could not furnish Respondent with definite delivery dates, and that the steering cyclinder vendor estimated delivery in 2 weeks, the bushing and filter vendors in 4 to 5 weeks, and the jackshaft vendor in 3 or 4 days. Kissinger further testified that by the end of March 24, the day of the layoff, the situation with respect to the number of steering cylinders, beater house bushings, hydraulic filter assemblies, and jackshafts available for installation was as follows: zero steering cylinders; a 3-day supply of bushings; a 3- or 4-day supply of filters; and a 5-day supply of jackshafts. Kissinger testified that the shortage of jackshafts was not critical to his decision to lay off the employees and that absent the shortage of the other three parts the employees would not have been laid off. Based upon the fact that they were out of steering cylinders and would shortly be out of beater house bushings and hydraulic filter assemblies and with no assurance of delivery of these three components in the immediate future, Kissinger testified that he throught it was "impossible to continue past March 24 . . . . It would not be impossible to continue, but it would not be economically feasible to continue."

It is undisputed that in the past Respondent had been out of steering cylinders and operated its assembly line for at least 4 or 5 days without the cylinders by either using old cylinders or cannibalizing ones from machines already assembled. Kissinger admitted that for the remainder of the week of the layoff, March 25 and 26, he could have used old cylinders as had been done in the past which would have been replaced by the new cylinders upon their arrival.[43] The record also establishes that on March 24, the day of the layoff, Kissinger knew that the steering cylinders had already been shipped from the vendor and would arrive within a week. Thus, Purchasing Agent McCauley testified that on March 24 he was not worried about the fact that Respondent was out of steering cylinders because he had been informed by the vendor that some were already in route to Respondent, having been shipped that very day, and knew that when they arrived they "could be added further up [assembly] line." As a matter of fact the shipment of steering cylinders arrived Monday, March 30, the third working day after the layoff.

Based upon the foregoing I find that on March 24 when Plant Manager Kissinger laid off the employees he knew that within 3 or 4 days Respondent would receive a shipment of steering cylinders and also knew that, as in the past, Respondent could have easily operated its assembly line in the interim without the steering cylinders. However, as of March 24 Kissinger had no information which would have led him to believe that either a shipment of beater house bushings or hydraulic filter assemblies would, like the steering cylinders, be received in the immediate future. But, as described *supra*, Kissinger testified that on March 24 when he laid off the employees there was a 3-day supply of beater house bushings on hand and a 3- or 4-day supply of hydraulic filter assemblies on hand. In other words, Respondent had more than enough bushings and filters to get it through the

[41] It is undisputed that Respondent unilaterally instituted the April 1 change in the employees' work schedule without first notifying and bargaining with the Union about the matter.

[42] As noted previously, the change resulted in the employees having only a 2-day rather than a 3-day weekend.

[43] Kissinger testified that it takes approximately 5 minutes to install the steering cylinders on a combine.

week of March 23 and into the week of March 30.[44] Nonetheless, Kissinger laid off the employees on March 24, in the middle of the workweek, even though he had the parts to continue production for at least another 3 days and International Harvester, Respondent's sole customer, was pressing it for the delivery of as many machines as it could produce. Kissinger did not explain why he abruptly laid off the employees in the middle of the workweek when there were sufficient filers and bushings for 3 more days of production. As a matter of fact Kissinger, during cross-examination, testified that he was positive that he did not lay off the employees until the end of the workweek March 26, because, as he testified, "I was sure we did not run out [of parts until] the end of the week."

I recognize that Purchasing Agent McCauley testified in effect that based upon his personal search for the bushings and filters that as of the end of March 24 there was only one bushing and no filters available for installation. However, Kissinger on two separate occasions contradicted McCauley's testimony. In any event it is the state of mind of Kissinger, the person who decided to lay off the employees, and not McCauley's state of mind which is significant. Moreover, I am extremely doubtful that McCauley did in fact conduct a personal search for the filters and bushings prior to the layoff. Thus, McCauley testified he only conducted his personal search after Warehouse Supervisor Engel, at McCauley's instruction, had conducted a personal search for the parts. Engel testified that he did not conduct any such search prior to the layoff, but conducted it during the week of March 30. Moreover, the testimony of warehouse employee Dana Albert establishes that on March 24 there were, as Kissinger testified, still 3- or 4-days' supply of bushings and filters available for installation. Albert testified that on March 24 she discovered a 4-day supply of bushings and an 8-day supply of filters in the area of the assembly line. In terms of her demeanor Albert was an impressive witness. I also note that she was not laid off, hence had no financial interest in this proceeding and was employed by Respondent at the time she gave her testimony, and there is no evidence that she was an active partisan of the Union, or for that matter was even a union member. I am also of the opinion that Albert's post-hearing affidavit does not impugn her testimony,[45] nor does her failure to bring to Respondent's attention the fact that on March 24 it had a supply of bushings and filters available for installation.[46]

[44] The record shows that in fact Respondent received 14 bushings on April 2 and 5 filters on April 8, and that on March 25 Respondent received a telex from its filter vendor notifying it that filters would be shipped on March 30. I also note that Kissinger testified that Respondent was in a position to resume operation on April 8.

[45] Albert's affidavit submitted to the Board on April 15 which states that on March 24 Respondent was out of steering cylinders but that there were sufficient bushings, filters, and jackshafts to finish out the week of March 23 and almost all of the next week is consistent with the testimony she presented in this proceeding.

[46] Albert testified that in view of the timing of the layoff coming immediately after the Union's election victory and immediately after Respondent had made several changes in the employees' work environment that she felt that it would do no good to say anything to Respondent about the availability of the parts because she felt that Respondent knew about them but had laid off the employees on account of the Union's election victory.

(c) *Ultimate conclusions*

As I have found *supra*, the General Counsel has made a *prima facie* showing that a motivating factor in Respondent's decision to lay off the employees on March 24 was its desire to retaliate against the employees because they voted in favor of union representation.[47] If the General Counsel makes such a showing, the burden then shifts to Respondent to advance a legitimate reason for the layoff and to prove that it would have laid off the employees for that reason even in the absence of their vote in favor of union representation, that is, that they would have been laid off for the legitimate reason even if they had never engaged in the activities protected by the Act. See *N.L.R.B.* v. *Nevis Industries, Inc.*, 647 F.2d 905, 909 (9th Cir. 1981). Also *Lippinscott Industries, Inc.* v. *N.L.R.B.*, 661 F.2d 112, 114 (9th Cir. 1981). Plant Manager Kissinger testified that the employees were laid off because the assembly work force, due to a lack of critical parts, namely, beater house bushings, steering cylinders, and hydraulic filter assemblies, could not continue to work and Respondent did not expect said parts to become available in the immediate future. However, as described *supra*, the record reveals that Kissinger's asserted justification is a sham because the purported circumstances advanced by him did not exist. Thus, at the time of the layoff Kissinger knew that, although Respondent was out of steering cylinders, a shipment was in route which could be expected within the week and that during the interim the assemblers, as they had done in the past, could work without the missing part. And with respect to the beater housing bushings and hydraulic filters the record establishes that at the time he laid off the employees on March 24 there were sufficient parts left to last the remainder of that workweek into the start of the next workweek. Under the circumstances Respondent did not succeed in rebutting the General Counsel's showing of antiunion motivation.

Based upon the foregoing I find that the General Counsel has proven by a preponderance of the evidence that Respondent, on March 24, laid off employees in order to punish the employees for voting in favor of union representation. I further find that by engaging in this conduct Respondent violated Section 8(a)(1) and (3) of the Act.

I am also of the opinion that Respondent violated Section 8(a)(5) and (1) of the Act by laying off the employees on March 24, prior to certification of the Union, without notice to or bargaining with the Union. As the Board has recently stated in *Clements Wire & Manufacturing Company, Inc.*, 257 NLRB 1058, 1059 (1981):

> Although an employer may properly decide that an economic layoff is required, once such a decision is

[47] Where as in the instant case an employer makes a decision to lay off a group of employees in order to punish the employees as a group for supporting the union, it is not necessary that the General Counsel establish that the employer knew of the union activities on the part of each laid-off employee or that each one of the laid-off employees have actually supported the union. See, generally, *Dillingham Marine & Manufacturing Co.* v. *N.L.R.B.*, *supra*, 610 F.2d 319, and cases cited therein.

made the employer must nevertheless notify the Union, and, upon request, bargain with it concerning the layoffs, including the manner in which the layoffs and any recalls are to be effected. By failing to so notify the Union while its objections to the election were pending, Respondent acted at its peril and, since the Union was thereafter certified as the collective bargaining representative of its employees, Respondent thereby violated Section 8(a)(5) and (1) of the Act.

Here Respondent failed to notify the Union about its decision to lay off the employees and failed to otherwise afford the Union an opportunity to bargain about the decision or its effects upon the employees.[48] The court's decision in *Sunderstrand, Inc.* v. *N.L.R.B.*, 538 F.2d 1257 (7th Cir. 1976), relied upon by Respondent, is significantly distinguishable from the instant case inasmuch as there the layoff occurred while the employer's objections to the election were pending and the layoff itself was motivated by compelling economic considerations. Here Respondent did not file objections and the layoff was motivated by a desire to punish the employees for supporting the Union. Likewise, the Supreme Court's decision in *First National Maintenance Corp.* v. *N.L.R.B.*, 452 U.S. 666 (1981), involving the permanent partial closing of a business, is inapposite. Unlike the permanent closure of part of a business which involves a change in the scope and direction of an employer's business enterprise, the temporary layoff of employees presumptively involves an aspect of the relationship between the respondent and the employees, particularly where, as here, the decision to lay them off was because of their union activities. I therefore find that Respondent violated Section 8(a)(5) and (1) of the Act by laying off its employees on March 24 without affording the Union an opportunity to bargain about the decision and the effects upon the employees.

8. The system of written warnings and discipline instituted on April 28

I am of the opinion that the General Counsel has established that a motivating factor in Respondent's decision to institute a system of written warnings and discipline on April 28 was a desire to retaliate against the employees for having selected the Union as their collective-bargaining representative.

The record establishes that at the time Respondent instituted the system of written warnings and discipline on April 28 that it was hostile toward its employees because they voted for union representation. In fact, Respondent threatened to make the employees' working conditions onerous and, in fact, made the employees' working conditions more onerous, in several respects because they voted for union representation. During the 5 weeks between the employees' selection of the Union and the implementation of the system of written warnings and discipline Respondent, as I have found *supra*, retaliated against the employees because they voted for the Union by making their work environment more onerous in several respects: laying off a majority of the employees for a 3-week period; and changing the employees work schedule for a 4- to a 5-day workweek. Also during late March and early April Warehouse Supervisor Engel, as I have found *supra*, informed employees Wentworth and Ochs that Respondent "intended to make it very, very rough" on the employees because they supported the Union and intended to replace the employees with antiunion employees by making working conditions so miserable that they would quit.

The record also establishes, as I have found *supra*, that, at all times during Respondent's operation of its business up to April 28, the employees, misconduct was not subject to any system of discipline. The result was that the employees' misconduct, as Supervisor Caroon testified, "usually it was just forgotten," and only rarely were employees ever issued written reprimands. On April 28, as I have described in detail *supra*, this situation changed dramatically when Respondent placed into effect a highly structured and formalized system of discipline pursuant to which supervisors were required to issue employees written reprimands for misconduct which reprimands were required to be forwarded to management and made a part of the employees' personnel files. Under this disciplinary system supervisors were given no alternative but to issue a written reprimand to an employee guilty of misconduct. Employee misconduct, which in the past had been left to the general discretion of the supervisors to deal with as they saw fit, was now part of a rigid and formalized disciplinary system which was calculated to ensure that employees would be disciplined for acts of misconduct which in the past supervision had overlooked. In short, from a system where an employee misconduct was "usually . . . just forgotten" by supervision, on April 28 Respondent went to a rigid and strict system of discipline.

The manner in which Respondent instituted its written warning and disciplinary system indicates that it was not motivated by legitimate business considerations. The employees were not informed that a system of warnings and discipline, including a system of progressive discipline, was being instituted. They first learned about the new system on April 30 when it was actually implemented. On that day Supervisor Caroon issued eight disciplinary reports to four different employees. He recommended that two of the employees be discharged.[49] The result was that Plant Manager Kissinger, pursuant to Respondent's new system of written warnings and discipline, placed three of the four employees on probation. Several of the disciplinary reports issued by Caroon on April 30 involved conduct which took place several days prior to either April 28 or 30 for which the employees were not reprimanded at the time it occurred.

The foregoing circumstances taken in their totality persuade me that the General Counsel has made a *prima facie* showing that it was a desire to punish the employees for voting in favor of union representation that was a

[48] Likewise, the record reveals the layoff was not prompted by a sudden emergency which would have precluded Respondent from affording the Union an opportunity to bargain.

[49] In Caroon's previous 10 months as the assembly line supervisor he did not recommend that one employee be terminated.

motivating factor in Respondent's decision to institute its new system of written warnings and discipline.

Respondent urges that the system of written warnings and discipline instituted on April 28 was not new but "was merely a written formalization of what had previously been a verbal policy, with the introduction of a form that was already on file" and that the decision to formalize the existing practice came about as a result of supervisors' complaint that employees were getting hard to live with and that the employees appeared to be engaged in a work slowdown. I reject this defense in its entirety. It is based solely upon the testimony of Michael Riccelli, the general counsel of Respondent's parent company, whose demeanor while testifying about this subject was unimpressive. Moreover, not only part of his testimony was corroborated.[50] Quite the opposite, the testimony of Assembly Line Supervisor Caroon, a witness called by Respondent, which has been described in detail *supra*, sharply contradicted Riccelli's testimony in significant respects. Caroon testified that prior to Riccelli's April 28 memo there was no system of discipline for supervision to follow, let alone the formalized system of progressive discipline and written reprimands set out in the memo. Caroon further testified that prior to April 28 supervision rarely did anything about employee misconduct, rarely informed management about employee misconduct, and rarely issued written reprimands. It is for the foregoing reasons that I find that Riccelli's testimony was false and further find that Respondent has failed to rebut the General Counsel's *prima facie* showing of antiunion motivation in Respondent's decision to institute the new system of written warnings and discipline.

Based upon the foregoing I find the General Counsel has proven by a preponderance of the evidence that Respondent on April 28 instituted a system of written warnings and discipline in order to punish the employees for voting in favor of union representation. I further find that by engaging in this conduct Respondent violated Section 8(a)(1) and (3) of the Act.

I also find that Respondent unilaterally instituted and enforced the aforesaid system of written warnings and discipline without first bargaining with the Union about the decision and the effects upon the employees,[51] in violation of Section 8(a)(5) and (1) of the Act. The new formalized system of issuing written warnings and disciplining employees instituted on April 28[52] contrasted sharply with the Employer's lack of any kind of a system prior to that date. It was a departure in past practice both in quantity and quality.[53] The new disciplinary system gave Respondent's work rules a new and different stature because rules which are subject to discretionary and flexible enforcement are transferred in nature when subject to a highly structured and formalized disciplinary procedure. See *Murphy Diesel Company* v. *N.L.R.B.*, 454 F.2d 303, 307 (7th Cir. 1971), and *N.L.R.B.* v. *Miller Brewing Company*, 408 F.2d 12, 16 (9th Cir. 1969). This was vividly demonstrated on April 30, the first day the new disciplinary system was implemented, at which time four employees received eight written reprimands and three of the employees were placed on probation. In short, the disciplinary system which Respondent put into effect on April 28 constituted a significant change in the employees' working conditions which materially and substantially affected employees' job security. Such a material change in conditions of employment is a mandatory subject of bargaining, and Respondent violated Section 8(a)(5) and (1) by making this change unilaterally. *N.L.R.B.* v. *Amoco Chemicals Corp.*, 529 F.2d 427, 431 (5th Cir. 1976); *Murphy Diesel Company* v. *N.L.R.B., supra*, 454 F.2d 303, 304–305, 307.

The consolidated complaint also alleges that Respondent independently violated Section 8(a)(3) of the Act by, on April 30, issuing written warnings to employees Wiley, Oates, Ochs, and Growt; by placing the latter three employees on probation on that same date; and by issuing a written warning on May 28 to employee Anderson. The aforesaid discipline was meted out to the employees pursuant to Respondent's unilaterally imposed and illegally motivated system of written warnings and discipline which violated Section 8(a)(1), (3), and (5) of the Act. So, as I have found *infra*, the remedial relief which would be granted if Respondent is found to have independently violated the Act by disciplining the aforesaid employees would be no different, for all practical purposes, than the relief appropriate to remedy the unilateral and illegally motivated institution of the system of written warnings and discipline which resulted in the employees' discipline. It is for this reason that I have not reached or passed upon the question of whether the discipline meted out to employees Ochs, Oates, Growt, Wiley, and Anderson, as described above, independently violated the Act as alleged in the complaint.

9. Respondent increases the employees' starting rates of pay and changes the formula used to compute the employees' periodic pay raises

As I have described in detail *supra*, Respondent, on or about June 1, 1981, increased its employees' starting rates of pay by 12 percent and at the same time changed the formula it used to determine how much of a pay raise employees' received pursuant to Respondent's periodic wage evaluations. Under the formula used before June 1, 1981, the employees, during a 12-month period, received a 12-percent cost-of-living increase whereas under the

[50] I find it difficult to believe that if Riccelli's April 28 memo to supervision were simply a codification of the Company's existing disciplinary system, as Riccelli testified, that Plant Manager Kissinger or some other member of supervision would not have been called to corroborate Riccelli's testimony. Likewise, I find it difficult to believe that, if as Riccelli testified, supervisors were complaining to Riccelli that employees were getting to be hard to live with and were engaging in a work slowdown that at least one of these supervisors would not have been called by Respondent to corroborate Riccelli's testimony.

[51] It is undisputed that Respondent, on April 28, decided to institute the disciplinary system and on April 30 implemented it without first affording the Union an opportunity to bargain even though the Union was the employees' certified bargaining representative.

[52] As I have found *supra*, the system of written warnings and discipline instituted on April 28 was not just a restatement of existing regulations but represented a substantial departure from prevailing practice.

[53] The written reports are placed in the employees' personnel files and under Respondent's new system of progressive discipline could affect the employees' job tenure. Previously supervisors only rarely issued written reprimands. Indeed they only rarely ever disciplined employees or advised management of employee misconduct.

new formula the cost-of-living increase was reduced to 7-1/2 percent for the same period. Under the formula used before June 1 employees, during a 12-month period, received a 3-percent increase based upon their tenure of employment whereas under the new formula this percentage was increased to anywhere from 6 percent to 13-1/2 percent for the same period, depending upon the employee's seniority.[54] Under the formula used before June 1, 1981, employees, during a 12-month period, were eligible to receive a 3-percent merit pay raise whereas under the new formula this percentage was increased anywhere from 6 percent to 8 percent depending upon an employee's seniority.[55] In short, prior to June 1, 1981, all employees during a 12-month period were assured of receiving a 15-percent pay raise and, if their productivity warranted, could receive as much as an 18-percent increase in their pay. Under the new formula instituted on June 1, 1981, employees, during a 12-month period were assured of receiving anywhere from a 13-1/2 percent to a 21-percent pay raise depending upon their length of service and, if their productivity warranted, would receive anywhere from a 19-1/2-percent to a 29-percent increase depending upon their seniority.

Based upon the foregoing I find that the June 1, 1981, change made by Respondent in the employees' starting rates of pay and in the formula which Respondent used to compute the employees' periodic pay raises were significant and substantial changes in the employees' wages which materially affected said wages and, because of this, I further find that Respondent was obligated to bargain with the Union about these changes before placing them into effect.[56] It is undisputed that Respondent instituted the June 1 changes in the employees' starting rates of pay and in the formula it used to compute the employees' periodic wage increases without consulting or bargaining with the Union. Thus, unless the Union waived its right to bargain about these matters, the Respondent's unilateral conduct was proscribed by the Act. The record does not support a finding that the Union waived its bargaining right over either the employees' starting rates of pay or the formula Respondent used to compute the employees' periodic pay raises. A contention of waiver of such a basic right as negotiation over wage rates cannot be implied but must be based on "clear and unmistakeable language." *Federal Compress & Warehouse Company* v. *N.L.R.B.*, 389 F.2d 631, 637 (6th Cir. 1968); accord: *Sinclair Refining Company* v. *N.L.R.B.*, 306 F.2d 569, 575 (5th Cir. 1962); *The Timken Roller Bearing Co.* v. *N.L.R.B.*, 325 F.2d 746, 751 (6th Cir. 1963). No such showing was made in this case. On May 19, as described in detail *supra*, the Union merely informed Respondent that "the Union agrees that the employees who are eligible for their annual wage reviews should receive them, without further delay, due to ongoing negotiations." The Union did not expressly or by implication give Respondent the slightest reason to believe that it was giving Respondent a license to unilaterally change the employees' starting rates of pay or to unilaterally change the formula used to compute the employees' periodic pay raises.

Based upon the foregoing I find that by unilaterally changing the employees' starting rates of pay and the formula used to compute the employees' periodic pay raises, without affording the Union the opportunity to bargain about these matters, Respondent violated Section 8(a)(5) and (1) of the Act.

The General Counsel further argues that by unilaterally changing the unit employees' wages on June 1, 1981, as I have found *supra*, Respondent violated Section 8(a)(3) of the Act, as well as Section 8(a)(5) and (1). The General Counsel urges that the record shows that the changes in wages were designed to punish the employees for voting in favor of union representation. I disagree. In support of this contention the General Counsel relies upon the fact that the employees who voted in the March 19 election did not receive the 12-percent cost-of-living increase which was incorporated into the new starting rates of pay placed into effect on June 1. Whereas the new hires who received these new higher starting rates did not vote in the union election, and the employees' annual cost-of-living increase was reduced on June 1 from 12 percent to 7-1/2 percent. On the other hand, however, the record reveals that the 12-percent cost-of-living increase paid to the new hires by virtue of the increase in the employees' starting rates of pay was the same cost-of-living allowance which Respondent, prior to the Union's organizational campaign was paying its employees under its pay raise formula. And since the record shows that Respondent had not increased its starting rates for at least 1 year prior to June 1, it was not unreasonable for Respondent at that time to increase these rates and to use the same cost-of-living allowance used in its pay raise formula to compute the new rate. With respect to the fact that Respondent reduced the employees' cost-of-living allowance under the new pay rate guidelines from 12 percent to 7-1/2 percent annually, the record shows that due to the length of service of the employees who voted in the election and the substantial increase in the employment tenure and merit allowances included in the new pay raise formula, that a majority of the employees who voted in the election were eligible under the new formula to receive higher pay raises under the new formula than the old formula. It is for these reasons that I reject the General Counsel's contention that the June 1 change in the employees' starting rate of pay and in the formula used to compute the employees' pay raises was illegally motivated. I therefore shall recommend that this allegation be dismissed.

10. On June 2 Respondent unilaterally instituted a new telephone and grievance policy for employees

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act on June 2 when it unilaterally placed into effect a new telephone policy governing employees use of the telephone and a new employee

[54] An employee with 1 year of service on June 1, 1981, received a 13-1/2-percent employment tenure increase during the next 12 months.

[55] An employee with 1 year of service on June 1, 1981, received an 8-percent merit pay raise during the next 12 months provided, of course, that his productivity warranted such an increase.

[56] Once employees select a union as their collective-bargaining representative, as was done in the instant case, the employer has an absolute obligation to bargain with the union before increasing or decreasing the amount of wage increases it grants to its employees. *N.L.R.B.* v. *Benne Katz, etc. d/b/a Williamsburg Steel Products Co., supra*, 369 U.S. 736.

grievance procedure.[57] The evidence pertinent to these allegations involves the June 2 negotiation meeting and has been set out in detail *supra*. Briefly stated, the evidence reveals that prior to instituting the alleged new telephone policy and the alleged new grievance procedure Respondent tried to bargain with the Union about these matters. Respondent placed them into effect only after the Union adamantly refused to bargain. It is for this reason that I shall recommend the dismissal of these allegations.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

CONCLUSIONS OF LAW

1. The Respondent, RAHCO, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including inspectors, employed by Respondent in its operation located in Spokane, Washington, excluding all office and office clerical employees, all technical and professional employees, and supervisors and guards as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. Since March 19, 1981, the Union has been, and is now, the exclusive representative of all the employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By telling employees they had been laid off because the employees voted in favor of union representation, Respondent violated Section 8(a)(1) of the Act.

6. By telling an employee that Respondent intended to contract out the employees' work and lay them off because they supported the Union and that the employees could avoid being laid off if they voted out the Union, Respondent violated Section 8(a)(1) of the Act.

7. By asking an employee to solicit other employees to withdraw their support from the Union, Respondent violated Section 8(a)(1) of the Act.

8. By telling an employee that Respondent intended to make it very rough on employees because they supported the Union, Respondent violated Section 8(a)(1) of the Act.

9. By telling an employee that Respondent intended to replace the employees who voted in favor of union representation with antiunion employees by making working conditions so miserable that the employees would quit, Respondent violated Section 8(a)(1) of the Act.

10. By conveying the idea to an employee that Respondent did not intend to bargain in good faith with the Union, Respondent violated Section 8(a)(1) of the Act.

11. On March 23, 1981, by making the changes in the employees' work environment listed hereinafter without affording the Union an opportunity to bargain about such changes and, for the purpose of punishing the employees for supporting the Union, Respondent violated Section 8(a)(1), (3), and (5) of the Act: prohibiting employees access to the plant until 5 minutes before starting time; prohibiting employees access to the quality control cage and the warehouse office; requiring the employees to get written permission from their supervisors to enter the main office or to use the telephone; taking away from the employees the keys to the storage areas where the employees' equipment and materials were locked up; and prohibiting employees from using the company phone during lunch or break periods unless it was for an emergency.

12. On March 24, 1981, by laying off the employees listed immediately below without affording the Union an opportunity to bargain about said layoff and for the purpose of punishing the employees for supporting the Union, Respondent violated Section 8(a)(1), (3), and (5) of the Act.

George Altringer	Robin Oates
Randy Anderson	Bob Ochs
John Angelo	Cornethia Slater
Thomas Campbell	Richard Swagger
Ray Collinsworth	Ron Walker
Donald Growt	Larry Wiley
Kevin Knutson	

13. On April 1, 1981, by changing the employees' workweek from four 10-hour days to five 8-hour days, without affording the Union an opportunity to bargain about said change and for the purpose of punishing the employees for supporting the Union, Respondent violated Section 8(a)(1), (3), and (5) of the Act.

14. On April 28, 1981, by instituting a system of written warning notices and discipline for the employees, without affording the Union an opportunity to bargain about this matter and for the purpose of punishing the employees for supporting the Union, Respondent violated Section 8(a)(1), (3), and (5) of the Act.

15. On June 1, 1981, by unilaterally changing the employees' starting rates of pay and the formula used to compute the employees' periodic pay raises, without affording the Union an opportunity to bargain about these matters, Respondent violated Section 8(a)(5) and (1) of the Act.

16. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

17. Respondent has not otherwise violated the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. And as the unfair labor practices committed by Respondent were sufficient in scope and of a sufficiently egregious nature as to demonstrate a disregard for the employees' statutory right to select a labor organization to represent them, I shall also recommend that

[57] The complaint also alleges this conduct violated Sec. 8(a)(3) of the Act. This contention has not been raised in the General Counsel's posthearing brief. In any event, the record fails to support this allegation. I therefore shall recommend that it be dismissed in its entirety.

Respondent cease and desist from in any other manner infringing upon the rights of employees guaranteed by Section 7 of the Act. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Having found that Respondent violated Section 8(a)(1), (3), and (5) of the Act by changing several of its employment practices without affording the Union an opportunity to bargain about the changes and by making these unilateral changes for the purpose of punishing employees for voting in favor of union representation, I shall recommend that Respondent be ordered to return to the method of operation which existed before it instituted these illegally motivated changes.[58]

With respect to the institution of the system of written warnings and discipline instituted on April 28, 1981, I shall additionally recommend that Respondent rescind and expunge from its records all written warnings and disciplinary action taken since April 28, 1981, pursuant to this illegally motivated written warning and disciplinary system. I shall also recommend that Respondent offer all employees discharged, suspended, or otherwise denied work opportunities solely as a result of the unilateral imposition of this illegal written warning and disciplinary system, immediate and full reinstatement to their former positions or, if they are not available, to substantially equivalent ones, without prejudice to their former seniority or other rights and privileges, and to make whole those employees for any loss of pay who are either discharged, suspended, or otherwise denied work opportunities solely as a result of the unilateral imposition of the illegal written warning and disciplinary system.[59] See *Electric-Flex Company*, 228 NLRB 847 (1977). In all cases of lost pay and/or benefits, the loss of pay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Having found that Respondent violated Section 8(a)(1), (3), and (5) of the Act by laying off 13 employees on March 24, 1981, without notice to and bargaining with the Union and in order to punish employees for voting in favor of union representation, I shall order that Respondent make whole those employees for any loss of pay and/or benefits suffered by reason of this illegal conduct.[60] Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As to the unilateral increase in the employees' starting rates of pay which was instituted without consultation or bargaining with the Union in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that upon request by the Union that Respondent shall rescind said increases. However, absent such a request, nothing in the Order herein should be construed as requiring revocation of this increase in employees' wages.

As to the unilateral change in the formula used by Respondent to compute the employees' periodic annual pay raises which was placed into effect on or about June 1, 1981, without bargaining with the Union in violation of Section 8(a)(5) and (1), as I have described *supra*, the number of employees who benefited and the number who suffered a loss of earnings because of this unilateral change is unclear. In such circumstances, I find that the remedy described in *Master Slack, et al.*, 230 NLRB 1054, 1057 (1977), is warranted.

Upon the basis of the foregoing findings of facts, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[61]

The Respondent, RAHCO, Inc., Spokane, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling employees they have been laid off because employees supported the International Association of Machinists and Aerospace Workers, AFL–CIO, or any other labor organization.

(b) Threatening employees with economic reprisals unless they withdraw their support from the above-named labor organization or any other labor organization.

(c) Asking employees to solicit employees to withdraw their support from the above-named labor organization or any other labor organization.

(d) Threatening to make employees' working conditions so onerous because they supported the above-named labor organization or any other labor organization that they would quit their employment.

(e) Conveying the idea to employees that Respondent would not bargain in good faith with the above-named Union or any other labor organization which was the exclusive bargaining representative of its employees.

[58] Since the record reveals that as of the date of the hearing in this case Respondent has reinstated its four 10-hour day workweek and eliminated its restrictions upon the use of the telephone and upon the employees entering the plant at the start of the workday, I have not recommended an affirmative remedial order covering these matters.

[59] Respondent is entitled to show in the compliance stage of this proceeding that any disciplinary action imposed after the institution of the illegal written warning and disciplinary system would have been imposed under the loose disciplinary practices observed prior to that date. I note that this issue was fully litigated with respect to the April 30, 1981, written warnings and probation discipline meted out to employees Growt, Wiley, Oates, and Ochs and the May 28, 1981, written warning issued to employee Anderson inasmuch as these acts of discipline were alleged as independent violations of the Act. As I have described in detail *supra*, I find that Respondent failed to demonstrate that the discipline imposed on April 30 upon employees Growt, Wiley, Oates, and Ochs and on May 28, 1981, upon Anderson would have been imposed absent Respondent's illegal written warning and disciplinary system. Indeed, as I have found *supra*, the manner in which the April 30 disciplinary action was imposed buttresses the conclusion that the new written warning and disciplinary system instituted on April 28, 1981, was instituted because of Respondent's desire to punish the employees for voting in favor of union representation.

[60] The usual reinstatement order has not been recommended because all of the laid-off employees were reinstated on or about April 13, 1981.

[61] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) Making unilateral changes in employees' wages, hours, and other terms and conditions of employment and laying off employees without notifying and affording an opportunity to bargain about such matters to the International Association of Machinists and Aerospace Workers, AFL-CIO, or in any other similar or related manner refusing to bargain collectively with the aforesaid Union as the exclusive bargaining agent of all production and maintenance employees, including inspectors, employed by Respondent in its Spokane, Washington, facility excluding all office and office clerical employees, all technical and professional employees, and supervisors and guards as defined in the Act.

(g) Discouraging membership in the above-named Union, or in any other labor organization of its employees, by laying off employees or by withdrawing from employees benefits or privileges enjoyed, or imposing upon employees onerous terms and conditions of employment or by otherwise discriminating with respect to its employees' wages, hours, or other terms and conditions of employment.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Restore the practice of allowing employees access to the quality control cage and warehouse office.

(b) Restore the practice of allowing employees access to the main office without having to get permission from supervision.

(c) Restore the practice of allowing employees to have possession of the keys to the storage areas where their equipment and materials are stored.

(d) Rescind and cancel the written warning and disciplinary system instituted on April 28, 1981, and remove from the personnel or other files of employees represented by the above-named Union all disciplinary reports or other memorandums of disciplinary action issued since April 28, 1981, and advise the affected employees, in writing, that all such disciplinary action has been rescinded and expunge from their records.

(e) Offer all employees discharged, suspended, or otherwise denied work opportunities solely as a result of the promulgation of the April 28, 1981, written warnings and disciplinary system immediate and full reinstatement to their former positions or, if they are not available, to substantially equivalent ones, without prejudice to their seniority or other rights and privileges and make whole for loss of pay all employees who were discharged, suspended, or who were otherwise denied work opportunities solely as a result of the promulgation of the April 28, 1981, written warning and disciplinary system in accordance with the recommendations set forth in "The Remedy" section of this Decision.

(f) Make whole the following 13 employees for any loss of pay and/or benefits suffered as a result of their March 24, 1981, layoff in the manner set forth in that portion of this Decision entitled "The Remedy":

George Altringer	Robin Oates
Randy Anderson	Bob Ochs
John Angelo	Cornethia Slater
Thomas Campbell	Richard Swagger
Ray Collinsworth	Ron Walker
Donald Growt	Larry Wiley
Kevin Knutson	

(g) Upon written request from the above-named Union, rescind the increases in the starting rates of pay of the employees represented in the above-named Union which were placed into effect on or about June 1, 1981.[62]

(h) Revoke the June 1, 1981, changes in the formula used to compute the periodic annual pay raises granted to the employees represented by the above-named Union and restore the formula in effect prior thereto, and make employees whole for any losses they may have suffered by reason of the changes in the formula, with interest, if the above-named Union makes a written request that Respondent revoke the changes it made in the formula.[63]

(i) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order and with respect to the provisions dealing with the rescission of all disciplinary actions.

(j) Post at its facility in Spokane, Washington, copies of the attached notice marked "Appendix."[64] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed insofar as it alleges violations of the Act not specifically found.

---

[62] This provision shall not be construed as requiring Respondent, absent the Union's request, to revoke the aforesaid wage increase.

[63] This provision shall not be construed as requiring Respondent to revoke the June 1, 1981, changes it made in the employees' pay raise formula, absent a request from the Union.

[64] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."